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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 658

GENERAL MOTORS CORPORATION,
a Delaware corporation
(BUICK MOTOR DIVISION and FISHER BODY DIVISION),
Appellant,

v.

APPEAL BOARD OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Appellees,
and
ROBERT H. STINSON, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

JURISDICTIONAL STATEMENT

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GENERAL MOTORS CORPORATION,
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v.
APPEAL BOARD OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Appellees,
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ROBERT H. STINSON, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of the State of Michigan entered on June 8, 1966 and finalized by an order denying rehearing entered on July 19, 1966, reversing an order of the Circuit Court for the County of Ingham, Michigan, and the basic findings and conclusions of a Referee and the Appeal Board of the Michigan Employment Security Commission, and uphold-

ing claims of four thousand seven hundred and ninety-eight individual Appellees for unemployment compensation benefits under the Michigan Employment Security Act (12 M.S.A. 17.501, *et seq.*), and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

OPINION BELOW

The initial decision of the Supreme Court of Michigan affirming the Circuit Court and denying unemployment benefits to Appellees by a three to two majority, with three judges disqualifying themselves, is reported at 376 Mich. 135, 135 NW 2d 921 and is attached hereto as Appendix A-10. The second decision of the Michigan Supreme Court reversing the Circuit Court and granting unemployment benefits by a four to three majority, after two of the three nonparticipating judges requalified themselves following an interim change in the Michigan General Court Rules (See 376 Mich ix-x and 377 Mich iv-v), is reported at 378 Mich 110, 142 NW 2d 686 and attached hereto as Appendix A-11. The opinion and order of the Circuit Court and the decisions of the Referee and Appeal Board of the Michigan Employment Security Commission are not reported, and copies of said opinion, order and decisions are attached hereto in Appendix A and numbered therein according to their order of issue as items A-1 through A-6.[1]

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[1] Both the Referee and Appeal Board issued two decisions in this case rather than one, since employes of two plants of Appellant were involved as claimants. For the purpose of this appeal, no material distinction exists in respect to such decisions, and they will be considered herein as a single decision based upon a single record, as they were considered by the state court.

The findings of fact and conclusions of law of the Appeal Board are found in the decisions of the Referee, having been adopted therefrom by the Appeal Board. The order of the Michigan Supreme Court granting rehearing *sua sponte* following its original opinion is not reported and a copy thereof is attached hereto in Appendix A as item A-7. The judgment of the Michigan Supreme Court entered on June 8, 1966 is not reported, and a copy thereof is attached hereto in Appendix A as item A-8. The order of the Michigan Supreme Court denying Appellant's request for rehearing following the judgment of June 8, 1966 is not reported, and a copy thereof is attached hereto in Appendix A as item A-9.

JURISDICTION

This suit is brought to review and enjoin the enforcement of a judgment of the Supreme Court of the State of Michigan on the ground that the Michigan Employment Security Act (12 M.S.A. 17.501, *et seq.*) as interpreted and applied by said judgment is repugnant to the United States Constitution and the Labor Management Relations Act of 1947, as amended (29 U.S.C. §151, *et seq.*) The judgment of the Michigan Supreme Court was entered on June 8, 1966. Thereafter application for rehearing was made by Appellant, which was denied by order entered July 19, 1966. Notice of appeal was filed in the Circuit Court for the County of Ingham, Michigan, the court then possessed of the record, on August 17, 1966. The jurisdiction of the Supreme Court to review this judgment is conferred by Title 28 United States Code Sections 1257 (2) and 2102 (c). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this

case: *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282; *Largent v. Texas*, 318 U.S. 418; *Bethlehem Steel Co. v. New York Board*, 330 U.S. 767; *La Cross Telephone Corp. v. Wisconsin Board*, 336 U.S. 18; *Guss v. Utah Board*, 353 U.S. 1; *Automobile Workers v. O'Brien*, 339 U.S. 454.

QUESTIONS PRESENTED

1. Where the major provisions for wages, hours and working conditions of employes of a single employer in a multi-plant bargaining unit are contained in a national agreement negotiated under the mandate of the Labor Management Relations Act of 1947, as amended, (29 U.S.C. §151 *et seq.*), and a strike was called by the national bargaining agent at only one plant, but partly in support of demands for changes in the wages, hours, and working conditions of employes in the bargaining unit at the other plants, and where the "strikes and stoppages" section of the national agreement expressly and lawfully provided that such a strike would be considered to extend to such other plants as might be affected by an interruption in the flow of material or services from the struck plant, is the Michigan Employment Security Act (12 M.S.A. 17.501 *et seq.*), which directs that unemployment benefits be paid to employes in the bargaining unit who become unemployed at such affected plants on the ground that said national agreement constitutes an unlawful waiver of benefits, and further provides that such benefits be charged to the employer's state account for tax rating purposes, invalid under the "supremacy clause" of Article VI Clause 2 of the United States Constitution as repugnant to and in conflict with the national agreement which carries the *imprimatur* of said Labor Management Relations Act?

2. Under the same factual situation, is the Michigan Employment Security Act (12 M.S.A. 17.501 *et seq*), which imposes an obligation on the employer to finance the payment of such unemployment benefits to its employes, invalid under the "supremacy clause" of Article VI Clause 2 of the United States Constitution as repugnant to the Labor Management Relations Act of 1947, as amended, (29 U.S.C. §151 *et seq.*) which permits employers freedom to exercise peaceful economic sanctions against their employes in such labor dispute situations; and invalid under the "commerce clause" of Article I Section 8 Clause 3 as prohibited state regulation in a field preempted by Congress for federal regulation?

3. Under the same factual situation, is the Michigan Employment Security Act (12 M.S.A. 17.501 *et seq.*), which charges the unemployment benefits paid to such employes against the account of the employer for purposes of calculating the employer's future payroll taxes under an experience rating system of taxation, invalid under the "due process" clause of Amendment XIV Section 1 of the United States Constitution?

4. Under the same factual situation, is the Michigan Employment Security Act (12 M.S.A. 17.501 *et seq.*), which predicates the payment or denial of unemployment benefits to Michigan employes who are involved in the labor dispute on whether such dispute originated and was negotiated in a plant of the employer located outside or inside of the State of Michigan, invalid under the "equal protection" and "due process" clauses of Amendment XIV Section 1 and under the "commerce clause" of Article I Section 8 Clause 3 of the United States Constitution?

5. Under the same factual situation, are the provisions of the Michigan Employment Security Act (12 M.S.A.

17.501 *et seq.*) which direct that benefits be paid to such employes and charged to their employer sanctioned by any provision or policy expressed by the Federal Social Security Act (42 U.S.C. 502-503) or by the Federal Unemployment Tax Act (26 U.S.C. 3301-3308), and, if so, do such provisions or policies override any conflict with or preemption by the provisions and policies of the Labor Management Relations Act of 1947 (29 U.S.C. §151 *et seq.*) as amended by the national agreement of the parties?

STATUTES INVOLVED

Sections 2, 29(1)(b), 31, 39, and 40 (12 M.S.A. §§17.502, 529 (1)(b), 531, 539, 540, C.L. '48 §§421.2, 421.29(1)(b), 421.31, 421.39, 421.40)[2] of the Michigan Employment Security Act, as amended, are set forth in Appendix B hereto as Item 1. Sections 1, 9(a), and 201(a) and (b) (61 Stat. 136, 143, 152; 29 U.S.C. §§151, 159(a), 171(a) and (b)) of the Labor Management Relations Act, as amended are set forth in Appendix B hereto as Item 2. Article VI Clause 2, Article I Section 8 Clause 3, and Amendment XIV Section 1 of the United States Constitution ~~are set~~ forth in Appendix B hereto as Item 3. Section 3304(a)(5) (68A Stat. 443; 26 U.S.C. §3304(a)(5)) of the Federal Unemployment Tax Act (being Subtitle C, Chapter 23 of the Internal Revenue Code) is set forth in Appendix B hereto as Item 4.

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[2] References to the Michigan Public Acts where the designated sections of the statute may be found are furnished with the quoted sections in Appendix B.

STATEMENT OF THE CASE

Background

General Motors has plants at various locations across the country, including a Buick Motor Division car assembly plant and a Fisher Body Division body assembly plant in Flint, Michigan, and a Fisher Body Division stamping plant in Mansfield, Ohio.

The 4798 individual Appellees, hereinafter called the Claimants, were at all times employes of the Buick and Fisher No. 1 Flint plants who applied for unemployment benefits under the Michigan Employment Security Act,[3] hereinafter sometimes referred to as the MESA, for certain benefit weeks in 1957. Their qualification for such benefits under Section 29(1)(b) of the MESA depended upon whether or not they were unemployed because of a stoppage of work due to a labor dispute at their employing plants, and whether or not they were "directly involved" in that dispute within the definition furnished by the Section.

The International Union, UAW, AFL-CIO, hereinafter called the Union, is a labor organization which was the exclusive representative of the Claimants in collective bargaining with General Motors and processed their claims to unemployment benefits before the Michigan Employment Security Commission and the state courts. The Union was at the same time the exclusive bargaining representative of over 300,000 production and maintenance employes at over 100 other automotive plants of General Motors across the country, including Buick and Fisher

[3] 12 M.S.A. 17.501 *et seq.*

No. 1 Flint. All of these employes, including the Claimants, were in a single certified national bargaining unit and were covered by a single national bargaining agreement.[4]

The record shows that for business purposes General Motors operated through several divisions. These divisions were not separate corporate entities, but rather were integral parts of a single business enterprise, all responsible to and under the operational control of a single board of directors and management staff.[5]

The Labor Dispute

General Motors commenced operating a new Fisher Body plant at Mansfield, Ohio during 1956. This stamping plant was tooled to produce sheet metal body parts for all makes of General Motors cars during the 1958 model year, including Buicks.[6] The Union was certified by the NLRB on May 8, 1957, as the exclusive bargaining representative of hourly production and maintenance employes employed in the plant.[7]

Thereafter General Motors and the Union entered into a Memorandum of Understanding at the national level,

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[4] General Motors Corp., Cadillac Motor Car Division, et al. (1958) 120 NLRB 1215, Ex. 25, par. 1 (405a). References to the printed Joint Appendix below will give the page number followed by the letter "a". References to the printed Appendix of Appellee below will give the page number followed by the letter "b". Both the Joint Appendix and the Appendix of Appellee are contained in the designated record certified by the Ingham County Circuit Court to this Court.

[5] 13a-16a.

[6] 34a, 319a.

[7] 250a-251a. A copy of the NLRB certification appears as Exhibit 29 (407a-409a).

which brought the employes in the newly certified unit under their National Agreement of June 12, 1955.[8] Under the Memorandum of Understanding, bargaining committees for General Motors and the Union were established and began to negotiate supplemental local wage, seniority and shift preference agreements, as provided under the National Agreement.[9] These initial local agreements were not negotiated between the local union and local management, since the national parties elected to and did retain direct control over the negotiations at Mansfield through their own committees.[10] The Union was particularly anxious to negotiate these agreements at the national level to prevent a move of work from Michigan to Ohio if less favorable local agreements were negotiated for the Mansfield plant.[11]

In the meantime the Union and General Motors Central Office Personnel Staff were also engaged in negotiations at the national level in Detroit looking towards the execu-

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[8] 255a. The National Agreement of June 12, 1955 appears as Exhibit 25 (405a). The Memorandum of Understanding bringing the Mansfield employes under the National Agreement appears as Exhibit 56 (3b-6b).

[9] 257a-261a. Ordinarily Paragraphs 59, 100 and 75 of the National Agreement provided for the negotiation of such local agreements for each plant by the local shop committee and local management, with the understanding that such agreements be approved by the Union and General Motors at the national bargaining level before becoming effective. Paragraphs 136(c) and 149 of the National Agreement provided that such local agreements could not supersede or conflict with the National Agreement. *At Mansfield the bargaining committees were not local, but national committees representing the General Motors Department of the International Union and General Motors' Central Office Personnel Staff under the specific provisions of the Memorandum of Understanding.* Exhibit 56, paragraphs 5, 6, (4b-5b).

[10] 259a-260a.

[11] Exhibit 60 (7b-10b).

tion of a supplement to the National Agreement dealing with matters relating to skilled trades and apprentice training. The Union had become the certified bargaining agent for apprentices at approximately 20 plants subsequent to August, 1956,[12] and expected to become certified as the representative of apprentices at other plants later.[13]

Even before the Union had become the representative of these apprentices, the National Agreement contained 13 pages of provisions dealing with apprentice training, since the wages, hours and working conditions of skilled trades and production employes at General Motors plants were directly affected by such provisions.[14] These provisions in the National Agreement dealing with apprentice training had been negotiated by the parties in recognition of and to safeguard the interests of the skilled and non-skilled employes whom the Union did represent.[15]

The demands made by the Union on the proposed national supplement included changes in existing provisions of the National Agreement, including those relating to apprentice training, the ratio of apprentices to journeymen, the allocation of overtime between journeymen and apprentices, and the eligibility of production employes for apprentice training.[16]

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[12] 262a-263a.

[13] 284a, 300a, 264a. At this time the apprentices at Buick and Fisher No. 1 were not represented by the International Union. The Fisher No. 1 apprentices became represented and were placed under the national apprentice supplement on or about November 27, 1958. 270a-271a, 307a-308a, 330a, 333a.

[14] Exhibit 25 paragraphs 120-136(e), Appendix C (405a).

[15] 262a-264a, 269a.

[16] 263a, 280a-282a.

On September 13, 1957 a five-day strike notice was delivered to General Motors by the Union indicating that a strike had been authorized by the Union at the Mansfield plant for September 18.[17]

On September 17, without any advance notice, the Union unilaterally moved the negotiations on the new apprentice training supplement to the National Agreement from Detroit to Mansfield.[18] Subsequent to September 17, in the negotiations at Mansfield the Union notified General Motors that the primary price of labor peace at Mansfield was a satisfactory negotiation of the proposed changes in the National Agreement. Thereafter these demands became the principal issue in the Mansfield negotiations.[19] Thus, the critical production position of the Mansfield plant was used by the Union to bring leverage against General Motors for negotiation of national demands.

On September 18 the Mansfield plant was struck by the Union; picket lines were established around the plant; production was halted; and no stampings were thereafter shipped from the plant until the proposed changes in the National Agreement and the new local agreements for Mansfield were tentatively agreed upon on September 26.[20]

The Mansfield plant was the sole source of essential fabricated sheet metal body parts for the Buick automobile. Because of the inability of the Mansfield plant to ship these parts to the Fisher No. 1 body assembly plant the production employes of that plant and the production em-

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[17] 256a-258a, Exhibit 57 (6b).

[18] 263a-265a, 318a-321a.

[19] 265a-267a.

[20] 257a-258a, 46a-49a.

ployes of the Buick assembly plant were unemployed for a period equal to the eight-day Mansfield strike.[21]

The National Agreement between General Motors and the Union contained a limited "no strike" clause which permitted the Mansfield strike.[22] As a part of this "no strike" clause, the scope of any strike authorized by the Union during the term of the Agreement was defined in Paragraph 118 as follows:

> "The Union has requested this National Agreement in place of independent agreements for each bargaining unit covered hereby. Accordingly an authorized strike in one bargaining unit under this Agreement which results in an interruption of the flow of material or services to operations in any other bargaining unit under this Agreement, will be considered an authorized strike in any such affected bargaining unit."

The following changes were made in the employment conditions of employes at Fisher No. 1 and Buick as a direct consequence of the demands negotiated at Mansfield for changes in the National Agreement.[23]

Production employes at Fisher No. 1 and Buick were given greater opportunity to become apprentices by raising the maximum age requirement.[24] Skilled trades employes gained added preference over the non-represented apprentices in the allocation of overtime work.[25] Appren-

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[21] 45a-46a. See Findings of the Referee, Appendix A-1, pp. 4-5 (423a-424a).

[22] Exhibit 25, Par. 117 (405a).

[23] 269a.

[24] 269a.

[25] 280a-282a.

tices received direct economic benefits in the form of wage increases, pay for related classroom training, tuition allowances, and tool and tool box allowances.[26] The benefits received by the Flint apprentices were extended to them pursuant to a longstanding and well-known policy of General Motors to extend to non-represented hourly employes all benefits negotiated for represented hourly employes.[27] The benefits received by the Flint production and skilled trades employes resulted directly from the negotiated Supplement to the National Agreement which modified provisions applicable to them.[28] These benefits were negotiated for the Flint skilled and production employes by the Union, despite the fact that the apprentices at Buick and Fisher No. 1 were not represented by the Union at that time,[29] and despite the National Agreement not being generally open for negotiation.[30]

Strike benefits were paid to the striking Fisher-Mansfield employes from a national strike assistance fund built from the "contributions" of all General Motors employes represented by the Union, including the Claimants.[31] These "contributions" were paid into the fund as a result of special assessments made over and above regular dues for the four-month period of May through August 1955.[32] The constitution of the Union in Article 12, Section 16, provided that strike assistance benefits would be paid from

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[26] 280a, 322a-324a, 330a.

[27] 267a-268a, 280a, 329a-330a.

[28] 278a-279a.

[29] 270a.

[30] 328a.

[31] 289a-291a, 294a, Exhibit 55, Article 16, Sec. 26, 419a.

[32] 294a.

the strike fund built by these assessments to UAW members engaged in strikes authorized by the Union as a matter of right. The Mansfield strikers were thus eligible to receive and did receive such benefits.[33]

The Referee Decision

After considering the record, the MESC Referee ruled that the Claimants were unemployed due to a "stoppage of work because of a labor dispute within the establishments of the Fisher Body Flint plant and the Buick Motor Division."[34] He, therefore, held that the basic disqualification test of Section 29(1)(b) of the MESA had been met. He ruled, however, that the Claimants were nevertheless qualified for benefits since they were not directly involved in the dispute. In support of this conclusion the Referee held that the Claimants had not voluntarily left work, or financed, or participated in the dispute, were not interested in the dispute, and that there was no "actual dispute in the particular departments or units in which the Claimants . . . were employed."[35]

In reaching his decision, the Referee made the following critical findings which have full support in the record:

1. General Motors and the Union did not enter into "a collusive agreement that benefits be

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[33] On the question of whether strike benefits were paid to the Mansfield strikers, the Union attorney representing the Claimants state during the trial on behalf of the Claimants and the International Union that, "I certainly don't challenge that whatever the constitution provided for was followed" (291a). The strike benefit payments were provided in the constitution as a matter of right. Exhibit 55, Art. 12, Sec. 16, Art. 16 Sec. 12, 126 (419a).

[34] Appendix A-1 p. 13 (433a).

[35] Appendix A-1 pp. 13-16 (434a-437a).

waived" in Paragraph 118 of the National Agreement, which merely "set forth the extent and scope of an authorized strike."[36]

2. Paragraph 118 operated in this situation to extend the strike and labor dispute to the Fisher No. 1 and Buick plants in Flint by agreement of the Union.[37]

The Referee also made the following self-contradictory findings:

1. The strike was over "local matters concerning working conditions involving the employes in such (Mansfield) plant."[38]

2. "The strike concerned certain issues involving working conditions in this particular plant. There was also an issue concerning apprentices."[39]

3. "It was brought out that certain matters concerning apprentices were involved in the dispute at the Ohio plant, and that agreement in this respect covered approximately 20 different units of apprentices, none of which however, concerned apprentices at the Fisher Body and Buick Motor Division plants in Flint. Further, the National Agreement was not shown to have been opened for negotiation at this time."[40]

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[36] Appendix A-1 p. 13 (433a).

[37] Appendix A-1 p. 13 (433a).

[38] Appendix A-1 p. 14 (435a).

[39] Appendix A-1 p. 4 (423a).

[40] Appendix A-1, p. 14 (435a). For some reason, no finding was made that the dispute concerned Flint production employes and journeymen, despite the undisputed testimony of a General Motors witness (see *infra* p. 31-32).

In qualifying the Claimants for benefits the Reference placed primary reliance upon the fact that the Fisher-Mansfield plant, where the labor dispute originated and was negotiated, was located in a state other than the State of Michigan, conceding that:

> "if the Fisher Body Mansfield plant had been located and maintained within this State, this matter would have presented and resulted in a different finding."[41]

The Appeal Board Decision

The decision of the Referee was appealed to the Appeal Board of the Michigan Employment Security Commission by General Motors, but the Board affirmed the findings and conclusions of the Referee as "in conformity with the law and the facts."[42] The Referee's factual findings thus became the findings of the Appeal Board and his conclusions of law became the conclusions of the Appeal Board.

The Circuit Court Decision

General Motors then petitioned the Ingham County Circuit Court to review by writ of certiorari those findings and conclusions of the Appeal Board which held that the Claimants were not "directly involved" in the labor dispute within the meaning of Subsections (1) through (4) of Section 29(1)(b) of the MESA.[43] The Claimants answered the petition, also alleging certain errors in the decision of the Appeal Board.[44] Principally, the Claimants asked

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[41] Appendix A-1, p. 16 (436a).

[42] Appendix A-3, p. 34 (478a).

[43] The Petition for Writ of Certiorari appears at 480a, *et seq.*

[44] The Answer of the Claimants appears at 500a, *et seq.*

the Court to reverse the findings of the Appeal Board that their unemployment during the benefit weeks in question was due to a stoppage of work because of a labor dispute within their respective establishments, and that Paragraph 118 of the collective bargaining agreement "was not an attempt by the Employer to secure a waiver of benefits in violation of Section 31 of the Act."

The Circuit Court reversed the decision of the Board, holding the Claimants to be disqualified for benefits for the weeks in question. The Court first said:[45]

> "The Referee and the Appeal Board found that there was a stoppage of work because of a labor dispute within the establishments of the Fisher Body Flint plant and the Buick Motor Division and that the claimants therefore came under the basic disqualification clause of the statute. With this finding the Court is in agreement."

Having thus sustained the finding of the Appeal Board that the basic disqualification provision of the Act had been met, the Court then found that the Claimants were "directly involved" in the dispute under Subsection (4) of Section 29(1)(b), saying:[46]

> "This Court cannot accept the legal and logical acrobatics indulged in by the Referee and the Appeal Board in holding that the above quoted sections of the statute exempted claimants from disqualification. It defies the mathematical law that the whole must necessarily include all of its parts. If the whole establishment is on an authorized strike and subject to a labor dispute, it follows that each department and unit is likewise on authorized strike and involved in a labor dispute."

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[45] Appendix A-5, p. 37 (505a).

[46] Appendix A-5, pp. 37-38 (506a-507a).

The Court then decided that the Claimants had also helped to finance the strike, and thus were "directly involved" in the dispute under Subsection (2) of Section 29(1)(b).[47]

The Court expressly sustained the finding of the Referee and Appeal Board that Paragraph 118 of the collective agreement was not an attempt to obtain a waiver of benefits under Section 31 of the Act.[48] In its decision, the Court said:[49]

> "Claimants argue that the validity of Paragraph 118 is to be tested and determined solely on the basis of results, and, if the provision results in disqualification, it is a collusive and void waiver of benefits. This is not the law of this State. It has been determined that an agreement, voluntarily entered into between employer and employee, covering a lawful subject of collective bargaining, is not an agreement to waive benefits even though the agreement may have a collateral effect on the employment status of the individual and result in disqualifying from benefits certain employees who otherwise would be entitled thereto. This Court finds no rational basis for distinction between the present case and that of *I. M. Dach Underwear Co. v. Employment Security Commission*, 347 Mich. 465. The Referee and the Appeal Board both found that the agreement was not void under Section 31 of the Act. Their finding was correct in fact and in law, and there is no basis for reversing such finding."

The Union appealed to the Michigan Supreme Court.

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[47] Appendix A-5, pp. 40-41 (509a-510a).

[48] During oral argument the Court pointed to the complete absence of any evidence on the record to support a finding of such an intent by either party to the agreement.

[49] Appendix A-5, p. 39 (508a).

The Decisions of the Michigan Supreme Court

As indicated hereinabove, the Michigan Supreme Court first decided on July 18, 1965 by a three to two majority that the Claimants were not qualified for benefits, affirming the Circuit Court and the basic disqualification findings of the MESC Referee and Appeal Board. Subsequently, after changing its rules on holding stock in a corporate party as grounds for automatic disqualification of its members, the Court reheard the case and on June 8, 1966 reversed its original decision by a four to three majority. The principal difference in the two decisions lies in the participation of two members of the Court in the second decision who had disqualified themselves from participation in the first decision due to their holdings of General Motors stock.

Treating the two decisions as a combined four to three decision, the majority of the Court granted benefits to the Claimants on the following grounds:

1. Paragraph 118 of the National Agreement could not operate to extend the strike and labor dispute from the Ohio plant to the Flint plants for unemployment compensation purposes, since any such agreement would constitute an illegal waiver of benefits contrary to Section 31 of the MESA.[50]
2. There existed no "labor dispute" in the Flint plants, although the negotiated settlement might benefit production employes in the Flint plants and similar benefits might be extended to the nonrepresented Flint apprentices by the unilateral policy of management. "The term labor dispute, as used in Section 29(1)(b) cannot be

[50] Appendix A-10, p. 55.

read so broadly. It means no more than a controversy between employer and employes regarding hours, wages, conditions of employment or recognition of a bargaining representative."[51]

3. The Supremacy Clause of the United States Constitution is not violated, since the Federal policy ordering collective bargaining, as expressed in the National Labor Relations Act, is not inconsistent with the "uniform policy of the states which prohibit agreement 'by an individual' to waive or commute payment of unemployment compensation in any instance where such compensation is otherwise lawfully payable to such individual."[52]

4. "The Federal policies of social security, effected in part by state-enacted unemployment insurance, and of enforced collective bargaining to reduce industrial strife are concordant rather than collisive, both stand without offense to the supremacy clause."[53]

On the other hand, the three dissenting judges would have denied benefits on the following grounds:

1. Paragraph 118 of the National Agreement was not an illegal waiver of benefits under Section 31 of the MESA, and did operate to extend the strike and labor dispute to the Flint plants of General Motors. "The waiver contemplated by the statute . . . is a collusive or coerced result, not one arising from the reality of present-day arms' length collective bargaining between well

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[51] Appendix A-11, pp. 65-66.

[52] Appendix A-10, p. 57.

[53] Appendix A-10, p. 58.

matched participants delineating the limits or extent of an authorized strike."[54]

2. "An authorized strike is not a creature of law, but, rather, of the call and action of the union." Here the union called the strike pursuant to its agreement in the Flint plants as well as the Ohio plant. This is no violation of Section 31 of the MESA.[55]

3. The findings of the Appeal Board that a stoppage of work due to a labor dispute existed in the Flint plants were not contrary to the great weight of the evidence. "There was undisputed testimony that the labor dispute at the Ohio plant involved and included not only local issues there, but also demands for changes in the wages, hours or other conditions of employment of the employes of other plants of the employer, including those of the 2 Flint plants (claimants herein) under the national agreement between the union and the employer."[56]

The Opinion of Judge Black for the majority of the Michigan court ended with the statement that "no other question calls for discussion."[57] Since the decision completely overlooked and ignored the arguments advanced by General Motors under the Commerce Clause, the Equal Protection Clause, and the Due Process Clause of the Federal Constitution, the Court was asked to grant rehearing on these questions in order to present this Court with a final decision by the state court on all federal

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[54] Appendix A-10, p. 53.

[55] Appendix A-10, p. 53.

[56] Appendix A-10, p. 52.

[57] Appendix A-10, p. 58.

points.[58] The request for rehearing was summarily denied without any acknowledgment that such additional questions had been raised and considered.[59]

General Motors then filed its Notice of Appeal to this Court.

How The Federal Question Was Presented

In the Notice of Appeal, Appellant indicated that certain briefs submitted at the administrative and state judicial levels would be lodged with the Court. The purpose in making these briefs available to the Court was to demonstrate that the federal questions submitted in this appeal were urged at all preceding steps of the appellate process. The decisions of the MESC Referee and Appeal Board and the Circuit Court did not comment on these questions. As indicated earlier in this section, the Michigan Supreme Court dealt only with the Supremacy Clause question.

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[58] See Application of Plaintiff and Appellee for Rehearing in the Designated and Certified Record.

[59] Appendix A-9.

THE QUESTIONS ARE SUBSTANTIAL

The Case Is Properly Brought By Appeal

The only special jurisdictional question which may be raised herein concerns the propriety of proceedings by appeal under Title 28 USC §1257(2), rather than through a petition for certiorari under Section 1257(3). The certified record and the added exhibits lodged with the Court clearly establish that the appeal was properly taken under Section 1257(2). An examination of the briefs to the state courts and administrative agency demonstrate that Appellant consistently challenged the validity of the state statute as finally applied by the state court on the ground of its repugnancy to the Constitution and statutes of the United States, and that the state court upheld the validity of the state statute despite this challenge. This ruling qualified the case for appeal under Section 1257(2).

Illustrating this point, in the argument portion of General Motors' brief to the Michigan Supreme Court under heading number 5, the federal policy of sanctioning collective bargaining agreements stated in the Labor Management Relations Act was set forth. Then the following proposition of law was asserted under the Federal Supremacy Clause:[40]

> "In view of this federal policy, the provisions of Paragraphs 117 and 118 cannot be invalidated by state law, nor can their covenants be disregarded or limited. Such covenants are sanctioned by federal law and, to the extent that state law conflicts, the state law must give way under Article 6, Clause 2, of the Federal Constitution."

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[40] Brief p. 71.

More specifically in respect to the anti-waiver provision of the state law, General Motors argued:[61]

> "A non-waiver section in a state law suffers the same infirmity as the section which originally grants the rights in question. Accordingly, for purposes of the question presented by Article VI, Clause 2, of the Federal Constitution, the Michigan law must be treated exactly as though Section 31 does not exist. From the standpoint of federal-state conflict of laws, or to be more precise, from a standpoint of conflict between Paragraph 118 sanctioned by federal law and employe rights granted under Michigan law, the provisions of Section 31 constitute a legal nullity."

A second Supremacy Clause argument was then summarized as follows:[62]

> "In fact, to the extent that state unemployment laws are interpreted to compel employers to pay strike benefits to employes who are participating or interested in labor disputes which affect interstate commerce, such state laws are void as invalid regulatory state legislation in a field pre-empted by the National Labor Relations Act. *Guss v. Utah Board,* 352 U.S. 817, *Amalgamated Assn. v. Wisconsin Board,* 340 U.S. 383. The state law cannot impose limitations or obligations on one party to a dispute where the federal law has left both parties free to exercise their respective economic sanctions without such limitations or obligations. *Automobile Workers v. O'Brien,* 339 Mich. 454, *Davidson v. Mich. State Carpenters Council,* 356 Mich. 557, and cases cited therein."

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[61] Brief p. 77.

[62] Brief pp. 80-81.

These arguments do not merely assert federal rights which would be abrogated by the application of the state law ultimately ordered by the state court. They clearly place in issue the validity of the state law as so applied on the ground of its conflict with the Federal Constitution and statutes, and, therefore, qualify the case for appeal under Section 1257(2).

Similarly, the secondary questions raised herein under the Commerce Clause, Equal Protection Clause and Due Process Clause of the Federal Constitution, were stated in the Brief of General Motors to the Michigan Court as challenges to the validity of the state statute, as follow:

> "To the extent that the decision is predicated upon the place of origination or negotiation of the labor dispute (i.e., the 'actual' dispute) being outside of the State, it is violative of Article I, Section 8, Clause 3 and the Fourteenth Amendment, Section 1 of the United States Constitution . . ." (quoting the cited sections).[63]

> "The sole question then remaining is whether the resultant discrimination, deprivation, and unequal protection undeniably inherent in this decision in respect to interstate employers can be justified as a classification or category reasonably designed to further the basic social objectives of the Michigan Act. If they are not, such an interpretation and application of the Act is violative of the Commerce Clause and the Fourteenth Amendment of the Federal Constitution."[64]

The decision of the Michigan Court confirms the conclusion that Appellant herein is entitled to appeal under

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[63] Brief p. 96.

[64] Brief p. 100.

Section 1257(2) on the Supremacy Clause question.[65] The opinion of Judge Black, speaking for the four to three majority on this point, stated the question as follow:[66]

> "Does the supremacy clause of article VI of the Federal Constitution validate a provision of a collective bargaining agreement which is illegal under a State unemployment compensation law?"

The opinion then proceeds to the following conclusion:[67]

> "Since as applied here the Federal policies of social security, effected in part by state-enacted unemployment insurance, and of enforced collective bargaining to reduce industrial strife, are concordant rather than collisive, both stand without offense to the Supremacy Clause."

Obviously, the inverse of this rule would be that where the state statute and the federal statute are collisive, the state statute cannot stand and must be invalidated under the Supremacy Clause. The decision clearly provides a proper basis for appeal under Section 1257(2).

The Decision of the Michigan Supreme Court is in Error and Questions of Grave Public Importance are Presented For Reveiw

By its refusal to give effect to the federally sanctioned collective bargaining agreement of the parties and to hold that the strike which commenced at the Fisher-Mansfield

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[65] As noted hereinabove, the state court refused to consider or discuss the remaining federal questions raised by Appellant's briefs and application for rehearing.

[66] Appendix A-10, p. 56.

[67] Appendix A-10, p. 58.

plant was extended to the Fisher No. 1 and Buick Flint plants of General Motors by Paragraph 118 of that agreement, the majority decision of the Michigan Court is directly contrary to *International Brotherhood of Teamsters, et al. v. Oliver, et al.*, 358 U.S. 283 and *California v. Taylor*, 353 U.S. 553. The goal of federal labor policy as expressed in the Labor Management Relations Act[68] is to encourage employers and unions of their employes to settle their disputes peacefully by imposing upon them the obligation to negotiate collectively on proper subjects of bargaining. The agreements which result from such negotiations are governed by Federal law (*Textile Workers Union v. Lincoln Mills*, 353 U.S. 448), and are endorsed and sanctioned by Federal law. Such agreements on lawful subjects of bargaining take on the *imprimatur* of the Federal law and are paramount to conflicting state law under the Supremacy Clause of the Constitution.

In this case, the bargaining agreement by Paragraph 118 provided that an authorized strike in one of General Motors' plants which interrupted the flow of material or services to another plant would be considered a strike in such affected plants. By this agreement, the parties defined the scope of an authorized strike as part of their limited "no strike" clause.

There can be no doubt of the Union's authority to negotiate such an agreement. Broad discretion is given to a certified union to negotiate binding agreements which it feels to be in the best interests of the members of the bargaining unit, even though such agreements may prove contrary to the interests of some individuals. *Ford Motor*

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[68] See Sections 1 and 201 of the Labor Management Relations Act stating the Federal labor policy. Appendix B-2, pp. 4-6.

Co. v. Huffman, 345 U.S. 330; *Aeronautical Lodge v. Campbell*, 337 U.S. 521; *Hildreth v. Union News Co.*, 315 F.2d 548, cert. den. 375 U.S. 826; *Simmons v. Union News Co*, 341 F.2d 531, cert. den. 382 U.S. 884. Furthermore, the *Ford Motor Co.* and *Hildreth* decisions establish that such agreements are not rendered invalid by their inherent derogation from benefit rights guaranteed to veterans by Federal statute. It can hardly be said that benefits rights granted by state law occupy a status superior to those granted by Federal law in the application of this principle.

To be more specific, a "no strike" clause is a lawful and mandatory subject of collective bargaining under the Labor Management Relations Act. *NLRB v. American National Insurance Co.*, 343 U.S. 395, 408; *NLRB v. Rockaway News Supply Co.*, 345 U.S. 71; *Allis-Chalmers Mfg. Co. v. NLRB*, 213 F.2d 374; *Shell Oil Co.*, 77 NLRB 1306. Should the parties wish to amplify such a clause, for example by insisting upon a vote as a condition precedent to a strike, the provision would be enforceable, if agreed to by the Union. *NLRB v. Borg-Warner Corp.*, 356 U.S. 342. Certainly, the provisions of Paragraph 118 of the National Agreement defining the scope of authorized strikes during the term of the agreement are likewise binding upon the Union and its members in the instant case.

As observed by the minority of the Michigan Court, a strike is a creature of the call of the union. Here, the union and the employer, bargaining at arm's length under the compulsion of Federal law, agreed that the strike extended to the plants of the Claimants and that the Claimants were on strike. The agreement concerned a lawful subject of bargaining and was enforceable in respect to the Claimants. No claim was made that the agreement was entered into by the parties collusively for unlawful pur-

poses and no evidence of such an intent was offered. In fact, the Appeal Board and the Circuit Court entered contrary findings,[69] which were left undisturbed by the Michigan Supreme Court. Since the Union called the strike in the Claimants' employing plants by agreement, and the agreement became sanctioned by Federal law without limitation, the Michigan Court was not free to invalidate or limit that agreement by application of the non-waiver provisions of the state statute, in order to qualify Claimants for benefits who would otherwise be disqualified. Such an interpretation of the state law was repugnant to the agreement which carried the *imprimatur* of the Labor Management Relations Act.

The arguments relied upon by the majority of the Michigan Court to circumvent the correct application of the Supremacy Clause are wholly without merit. The majority first held that no labor dispute in fact existed in the Claimants' employing plants, and then held that the policy of encouraging state unemployment legislation expressed in the Federal Social Security Act imputed Federal sanction to the non-waiver provision of the resultant state law. Both rulings were erroneous as a matter of Federal law.

The evidence concerning the substance of the labor dispute consisted entirely of the undisputed testimony of the

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[69] The Appeal Board found that the agreement was not "a collusive agreement that unemployment compensation benefits be waived." (433a) The Circuit Court sustained this finding saying, "it has been determined that an agreement voluntarily entered into between employer and employe, covering a lawful subject of bargaining, is not an agreement to waive benefits even though the agreement may have a collateral effect on the employment status of the individual and result in disqualifying from benefits certain employees who would otherwise be entitled thereto." (508a)

Director of Labor Relations of General Motors, who participated in the negotiations first in Detroit and then at the Mansfield plant. The Claimants offered no rebuttal witnesses or evidence to contradict this testimony. The testimony as to the matters in controversy was as follows:

1. After the beginning of the strike at Mansfield, the Union representatives made it clear that there would be no settlement until agreement was reached on a supplement to the National Agreement.[70]

2. As Director of Labor Relations for General Motors, the witness went to Mansfield and entered the negotiations personally, because he knew that a strike of any duration at that stamping plant would shut down assembly at every automotive division just when 1958 model production was beginning.[71]

3. There were many provisions in the National Agreement concerning apprentices and apprentice training, even though the Union had not theretofore bargained for apprentices. These provisions protected the wages, hours and working conditions of the production workers and journeymen who were represented by the Union.[72]

4. The provisions of the National Agreement applied to the production workers and journeymen at Fisher No. 1 and Buick Flint who were represented by the Union.[73] They did not apply to the apprentices at those plants who were not represented.[74]

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[70] 265a.

[71] 321a.

[72] 262a-264a, 269a.

[73] 270a-271a.

[74] 269a.

5. The demands made upon General Motors in the Mansfield negotiations included demands for changes in some provisions of the National Agreement which involved the wages, hours and working conditions of the Union represented production workers and journeymen.[75]

6. The settlement reached at Mansfield included changes in the National Agreement which directly benefited the Union represented production employes and journeymen at the Fisher No. 1 and Buick Flint plants. The benefits were extended to and received by those employes and journeymen as a result of the negotiated settlement.[76]

7. The improvements negotiated at Mansfield for Union represented apprentices at 20 other General Motors plants were extended to the non-repsented apprentices at Fisher No. 1 and Buick under General Motors' long standing policy of extending to non-represented employes comparable improvements negotiated for represented employes in like circumstances.[77]

This testimony clearly established that demands were made by the Claimants' bargaining agent under the duress of an authorized strike which threatened to shut down all automotive assembly plants of General Motors, and did shut down the Claimants' employing plants. The demands called for improvements in the wages, hours and working conditions of the production employes and journeymen in the Claimants' plants and the negotiated improvements were accepted by those employes.

On this evidence, three members of the Michigan Court found that the labor dispute existed at Claimants' plants

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[75] 269a.

[76] 269a, 280a-281a.

[77] 322a, 324a, 330a.

as well as at the Mansfield plant, even if the provisions of the National Agreement were disregarded, since the dispute involved demands for changes in the wages, hours and other conditions of employment of the employes of the "two Flint plants . . . under the national agreement."[78]

The four member majority of the Michigan Court acknowledged this undisputed evidence, but refused to conclude therefrom that the labor dispute extended to the Claimants' plants, saying, "the term 'labor dispute' . . . cannot be read so broadly."[79]

As a general rule this Court will not re-examine the factual findings of a state court. *Grayson v. Harris,* 267 U.S. 352, 358. However, two well recognized exceptions exist in respect to this rule. The exceptions arise "where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it; or where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts." *Fiske v. Kansas,* 274 U.S. 380, 385-386.

The Court has also adopted the firm principle that "a duty rests upon the Court to decide for itself facts or constructions upon which federal constitutional issues rest." *Kern-Limerick, Inc. v. Scurlock,* 347 U.S. 110, 121; *Napue v. Illinois,* 360 U.S. 264, 271-272.

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[78] Appendix A-10, p. 52.

[79] Appendix A-11, pp. 64-66. On this point, the decision is repugnant to the determination of the NLRB that both the Mansfield and Flint employes were employed in a single bargaining unit under a single national agreement, and were represented by a single bargaining agent. *General Motors Corporation (Cadillac Motor Car Division, et al.)* (1958) 120 NLRB 1215 (followed by this Court in *NLRB v. General Motors Corporation* (1963) 378 US 734, 735.)

It is submitted that the instant case falls within these exceptions, and that the Court should make whatever independent review of the evidence it may deem necessary to determine whether the "labor dispute" in question, as defined by the Federal Labor Management Relations Act, involved the Claimants and, therefore, existed within their Flint plants. Appellant's constitutional rights turn upon this finding, independent of the application of the collective bargaining agreement. If the dispute, by the scope of the demands under negotiation, encompassed the Claimants and their plants, the application given to the state law would be repugnant to the Labor Management Relations Act and the Supremacy Clause, aside from the provisions of the contract.

Assuming that the Claimants were directly involved in the dispute, as the record clearly demonstrates, the order of the state court, if left in effect, would compel General Motors to finance the payment of strike benefits to those of its employes whose wages, hours and working conditions lay at the crux of the underlying dispute. This interpretation of the state law is in open conflict with and repugnant to the scheme of the Labor Management Relations Act, which left both parties to this dispute free to exercise peaceful economic sanctions in support of their respective bargaining positions. Under the Federal Act, if employes engage in a lawful strike and withhold their labor, the employer is free to withhold their wages. He may also exercise a counter economic sanction, in order to improve his bargaining position, by locking the employes out. *The American Ship Building Co. v. NLRB*, 380 U.S. 300. Certainly the Act does not contemplate that an employer finance strike benefits for his employes during the active progress of a labor dispute designed to obtain from him improved terms of employment.

Any state enactment which might compel employers to pay strike benefits directly to their employes during a labor dispute would unquestionably be invalid as repugnant to the Labor Management Relations Act. "Since the Federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside of the power of the state." *International Brotherhood of Teamsters v. Oliver,* 358 U.S. 283, 296; *International Union v. O'Brien,* 339 U.S. 454, 457; *Hill v. Florida,* 325 U.S. 538, 542-544; *Amalgamated Assn. v. Wisconsin Employe Relations Board,* 340 U.S. 383. That which a state cannot enact directly is equally invalid if done indirectly.

The Michigan Employment Security Act imposes payroll taxes on General Motors to finance the payment of unemployment benefits to employes who become involuntarily unemployed through no fault of their own.[80] The annual rate of these taxes increases directly with the amount of benefits paid to General Motors employes within the state in preceding years.[81] Under this merit rated tax scheme the payment of benefits to thousands of employes who are engaged in a labor dispute inevitably increases the amount of tax to be paid by General Motors in succeeding years. Thus, by ordering the payment of unemployment benefits to the Claimants in this case, the Michigan Court converted the Michigan Employment Security Act into an employer financed strike benefit law. The fact that such strike benefits were ordered paid to the employes indirectly as unemployment benefits does not alter the

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[80] See Section 2 of the MESA stating the policy of the Act. Appendix B-1, p. 1.

[81] Sections 19 and 20, MESA (M.S.A. 17.520, 17.521).

result, which is wholly repugnant to the scheme of and in conflict with the Federal labor law.

The state law, as applied in this case, is also invalid under the Supremacy and Commerce Clauses of the Constitution as prohibited state regulation of interstate labor-management relations, a field preempted by Congress for Federal regulation. *Guss v. Utah Board*, 353 U.S. 1; *Amalgamated Assn. v. Wisconsin Employment Relations Board*, 340 U.S. 383. Any law which financially supports employes engaged in a labor dispute with their employer inevitably has a grave regulatory impact on the balance of labor-management relations envisaged by the Federal labor law. The Michigan Act invokes even more serious consequences by shifting the cost of such support to the employer, thereby rendering a successful defense of his bargaining position virtually impossible. Obviously, it was never intended by Congress that state social security programs would be permitted to exercise such a partisan role in labor-management relations.

Contrary to the ruling of the Michigan Court, the fact that such state regulation masquerades under the guise of social security legislation cannot salvage the state law. While it is true that Congress encouraged the enactment of state unemployment compensation laws by the Federal Unemployment Tax Act and fixed a few standards to be met by such laws, it does not follow that every provision of the resultant state laws are sanctioned by Federal policy. Certainly the labor dispute disqualification provisions of Section 29 (1) (b)[82] and the non-waiver provisions of Section 31[83] of the Michigan Act do not carry Federal endorsement. On the contrary, they reflect pure state policy.

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[82] Appendix B-1, pp. 1-2.

[83] Appendix B-1, pp. 2-3.

The only specific Federal standards for state legislation in the unemployment compensation field are found in the Federal Unemployment Tax Act[84] and the Social Security Act.[85] None of these standards even indirectly endorses the labor dispute disqualification and non-waiver provisions of the Michigan law as applied by the state court. This is demonstrated by the fact that other state laws offer a broad range of labor dispute disqualification provisions and differing interpretations, each patently based upon pure state policy.

For example, in Ohio, contrary to the general rule applied by other states, employees who are locked out are automatically paid unemployment benefits regardless of their involvement in the underlying dispute.[86] The same unique provision is found in Pennsylvania,[87] Arkansas,[88] and Kentucky.[89] Contrast this to the Arizona[90] and New

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[84] The standards provisions of this Act are printed in Appendix B-4, p. 7.

[85] 42 U.S.C. 503 (1935, 49 Stat. 626; 1938, 52 Stat. 1112; 1939, 53 Stat. 848; 1939, 53 Stat. 1378; 1946 Reorg. Plan No. 2, §4, 60 Stat. 1095; 1946, 60 Stat. 991; 1949 Reorg. Plan No. 2, §1, 63 Stat. 1065; 64 Stat. 560; 68 Stat. 673)

The standards provisions of this statute obviously do not apply to the Federal questions at bar and were not printed in Appendix B for that reason.

[86] CCH Unemployment Insurance Report Sec. 4096. Such a provision clearly constitutes an unconstitutional state regulation of this form of labor dispute in view of the recent decision of this Court which leaves an employer free to exercise a lockout as an economic weapon in a labor dispute after an impasse is reached in contract negotiations. *American Ship Building Company v. NLRB*, 380 U.S. 300.

[87] CCH Unemployment Insurance Report Sec. 4102.

[88] CCH Unemployment Insurance Report Sec. 4036(A).

[89] CCH Unemployment Insurance Report Sec. 4036

[90] CCH Unemployment Insurance Report Sec. 4177.

York[91] statutes which expressly disqualify employes for benefits who are locked out in the course of a labor dispute.

As a further example, most states disqualify claimants whose unemployment is due to a "labor dispute in the (claimants') establishment" for the duration of the unemployment caused by the dispute. However, the New York[92] and Rhode Island[93] statutes expressly provide for the payment of benefits to *strikers* after 7 weeks and 6 weeks, respectively.[94]

The same differences appear in respect to the construction of the phrase "unemployed due to a labor dispute *in the establishment*" found in the disqualification sections of most state laws. Comparison of such decisions as *Chrysler v. Smith*, 297 Mich. 438, 298 NW 87, overruled by *Park v. ESC*, 355 Mich. 103, 94 NW 2d 407, *Ford Motor Co. v. Abercrombie*, 207 Ga. 464, 62 SE 2d 209, *Schaffer v. Industrial Commission*, 11 Wis. 2d 358, 105 NW 2d 762, and *Matter of Ferrara*, 10 NY 2d 1, 176 NE 2d 43, demonstrates the conflicting interpretations given this phrase by the state courts. Each state court has defined the term "establishment" by use of its own unique factors, with the result that claimants in identical circumstances are denied benefits in one state and paid benefits in another depending upon the judicial construction given this language. These cases demonstrate the varying state policies upon which these provisions of the unemployment compensation laws are based.

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[91] CCH Unemployment Insurance Report Sec. 4144

[92] *Supra.*

[93] CCH Unemployment Insurance Report Sec. 4216.

[94] This type of provision also clearly contravenes the constitutional rights of employers, since, on its face, it compels the financing of strike benefits.

In order to better understand the Federal policies operating in this area, the state court decision in this case should be contrasted with the decision of this Court in *U.C.C. of Alaska v. Aragon,* 329 U.S. 143. There, a contention was made on behalf of unemployment compensation claimants employed in Alaskan fisheries, that a dispute involving their wages, hours and working conditions negotiated in San Francisco and Seattle did not exist in their "establishments." The Court summarily rejected this specious argument and upheld the denial of benefits by the Alaska Commission, saying (p. 155) "It is clear that the subject matter of the dispute related to the operation of the Alaskan establishment . . . We do not consider significant the fact that the companies and workers customarily carried on negotiations far distant from the Alaskan establishments. It seems unlikely that it was intended that this ordinary and usual procedure should defeat the disqualification for benefits incorporated in the Act." The *Aragon* decision properly maintained the neutrality of the Alaska Unemployment Compensation Law in regard to the underlying labor dispute, and precluded the type of interference with Federal labor policy implicit in the decision of the Michigan Court. The same laudable observation can be applied to nine states where by express statutory provision the neutrality of the state law is insured in respect to multi-plant employers by a provision that a labor dispute in the claimants' establishment *or in any functionally integrated establishment of the employer* automatically disqualifies the claimants for benefits.[95]

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[95] Connecticut CCH Unemployment Insurance Report 4028, Idaho CCH Unemployment Insurance Report 4066, North Carolina CCH Unemployment Insurance Report 4072, Oregon CCH Unemployment Insur-

(Continued on next page)

Which of these state laws can be said to have the support of Federal policy? Obviously all cannot, for under common labor dispute situations unemployment benefits are paid in some states and denied in others. The conclusion is inescapable that the labor dispute disqualification provisions of the state laws are founded solely on state policy and are endorsed by neither the Federal Social Security Act, nor the Federal Unemployment Tax Act.

The same obviously is true in respect to the waiver of benefits provisions of the state laws relied upon by the Michigan Court. The waiver provision of a state law depends entirely upon the disqualification and eligilibity provisions of the state law for effect, and automatically suffers the same infirmity that such other provisions suffer. Stated bluntly, the waiver provision of the state law cannot by some super-legislative process protect a state disqualification provision which is invalid as repugnant to Federal law.

Error was also committed by the Michigan Court in rejecting the secondary objections of General Motors to the discrimination against interstate commerce candidly admitted in the decision of the MESC Appeal Board. As noted hereinabove, after finding that the basic disqualification test was met by applying paragraph 118 of the National Agreement, the Board refused to find that the Claimants were directly involved in the dispute, solely because

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(Continued from preceding page)

ance Report 4040, Texas CCH Unemployment Insurance Report 4018, Utah CCH Unemployment Insurance Report 4015, Virginia CCH Unemployment Insurance Report 4066, Ohio CCH Unemployment Insurance Report 4096, Michigan (amended 1963) CCH Unemployment Insurance Report 4074. Michigan followed this rule by judicial interpretation from 1941 until 1959, when the Michigan Supreme Court reversed *Chrysler v. Smith*, 297 Mich. 438, by its decision in *Park v. ESC.*, 355 Mich. 103. No assertion was made by the Court that either of these decisions was based upon Federal standards or Federal policy.

the controversy began and was negotiated in an Ohio plant of General Motors. The Board frankly admitted that "if the Fisher Body Mansfield plant had been located and maintained within this state, this matter would have presented and resulted in a different finding."[96] The Circuit Court correctly reversed this discriminatory ruling observing that "if the whole establishment is on an authorized strike and subject to a labor dispute, it follows that each department and unit is likewise on authorized strike and involved in a labor dispute."[97] The Michigan Supreme Court did not consider this point, since under its interpretation of the statute no dispute existed in the Claimants' plants and, therefore, the prerequisite basic disqualification test was not met.

Since the Michigan Court erred under the Supremacy and Commerce Clauses of the Constitution in failing to apply the basic disqualification provision of the state law to the Claimants, it will ultimately be necessary to reexamine the question of the Claimants' involvement in the dispute and to pass upon the constitutional question raised by the unlawful discrimination admitted in the Appeal Board's decision. As noted hereinabove, the Michigan Court refused to pass upon this question.

Whether a labor dispute is initiated and negotiated in a plant located in another state has no bearing on the basic objectives of this social legislation. Such arbitrary and discriminatory distinctions have no reasonable relationship to the voluntary or involuntary nature of a claimant's unemployment, or to whether or not the claimant was directly involved in the strike, lockout, or labor dispute. Therefore, the test of involvement applied by the Appeal Board does not constitute a reasonable classification, and

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[96] Appendix A-1, p. 16.

[97] Appendix A-5, p. 38.

the result clearly imposes a discriminatory burden on interstate employers, both tax-wise and labor relations-wise, in violation of the Equal Protection and Commerce Clauses of the Constitution.

The Michigan Court should be instructed on remand to reject the unconstitutional decision of the Board on this point, and to render a decision compatible with the Equal Protection and Commerce Clauses. Failure to so instruct the state court could well result in a further appeal to this Court and an unnecessary protraction of the case.

To the extent that the interpretations of the state law handed down by the Michigan Court violate the Federal Constitution, as demonstrated hereinabove, the added payroll taxes imposed upon General Motors and the disadvantages imposed upon General Motors in its labor negotiations by these unlawful acts also constitute a confiscation of its property without due process of law in further violation of the Federal Constitution.

Conclusion

The questions raised by this appeal have not heretofore been addressed to this Court, and offending state statutes which are clearly repugnant to the scheme of Congress for labor-management relations under the Labor Management Relations Act have been permitted to operate as a debilitating burden on free collective bargaining. The conflict between Federal policy endorsing collective bargaining and resulting collective agreements and state policy invalidating such agreements and compelling one side in negotiations to provide financial support to the other is so fundamental as to require little comment on the need for review of this case.

As long as constitutional guidelines are not established spelling out the limits within which state unemployment

compensation laws may operate in labor dispute situations and on questions involving the application of collective bargaining agreements, the availability of state benefits financed solely by employers will always stand as a continuing invitation to breaches of labor peace, exorbitant demands, violations of contract, and inflationary settlements. In the absence of such guidelines the present unemployment compensation laws have been converted by a few state boards, courts, and legislatures into powerful strike weapons favoring unions and penalizing employers. It is submitted that the existence of such regulatory, discriminatory and confiscatory state laws is fundamentally contrary to Federal labor policies endorsed by Congress through the provisions of the Labor Management Relations Act and repugnant to the Federal Constitution.

We believe that the questions presented by this appeal are substantial and of grave public importance, and we urge the Court to accept the case for oral argument.

Respectfully submitted,

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APPENDIX A-1

Decision

(Michigan Employment Security Commission, Referee Section)

In the Matter of the Claim of Robert H. Stinson, et al., 713 Oak Street, Flint, Michigan.

SS No. 379-05-7654.

Referee—Wesleyan Voigt.

Employer involved—Fisher Body Division, GMC, Flint Plant No. 1, Flint, Michigan.

Appeal No. B59-4900 (1002) et al. (See attached list.)

FINDINGS OF FACTS AND REASONS

On June 10, 1958, *Notices of Redeterminations were issued by the Commission which held in substance that the claimants whose names appear on the list attached hereto were disqualified under the provisions of Section 29 (1) (b) (4) of the Act from receiving unemployment benefits for various periods coming within the weeks ending September 21, 1957, through week ending October 19, 1957, as applicable. It was further set forth that a stoppage of work due to a labor dispute occurred at the Fisher Body Mansfield, Ohio, plant of General Motors Corporation from September 18, 1957, through September 26, 1957. This plant produces parts necessary for the production of Buick automobile bodies, and the operation of such plant was functionally integrated with the operations of Fisher Body Flint plant #1 and the Buick Motor Division. Buick Motor Division depends upon Fisher Body Flint plant #1 for auto bodies and Fisher Body Flint plant #1 depends upon the Fisher Body Mansfield plant for body parts. These plants were therefore considered as one establishment, and the claimants' unemployment resulted from the effects of the Mansfield labor dispute upon the employer's operations.*

Timely appeals were filed on June 13, 1958, on behalf of the claimants by their representative, Clayton E. Johnson. All claimants herein were employees of the Fisher Body Flint plant #1. Similar notices of redeterminations were also issued by the Commission to claimants who were employed at the Buick Motor Division, and timely appeals were filed on their behalf by their representative, Clayton E. Johnson. These appeals are covered by a separate decision B59-4901 (2521) et al. In addition thereto, there were several appeals involving claimants, some of which were employed at the Fisher Body Flint plant #1 and others at the Buick Motor Division, to which specific objections were made involving the jurisdiction of the Referee, and such matters are covered in separate decisions.

By agreement of the parties, consolidated hearings were held on all such appeals, above-mentioned, on February 23, 24, 25, March 28, 29, 31, April 5, 21 and May 9, 1960. The employer was represented by Henry M. Hogan, General Counsel (K. Douglas Mann, of counsel). Clayton E. Johnson, with Thomas Doherty, appeared on behalf of the claimants, with the exception of four claimants, namely, Robert H. Stinson, Donald R. Sorensen, Walter Skidmore and George Montgomery. These four claimants were represented by Zwerdling & Zwerdling, Attorneys (A. L. Zwerdling, of counsel). Dan Merrill of the Commission's Flint Branch Office appeared for the Commission. Some of the claimants were also present. Witnesses who appeared and testified are listed by name as follows: Earl Bramblett, John P. Bender, Robert B. Moran, George E. Sullivan, Robert M. Wagner, George A. Lincoln, Stephen M. DuBrul.

The individual appeals on behalf of the claimants herein were filed through their representative on the basis of separate written authorizations filed by each of such claimants. It was the contention of the employer that such individual authorizations did not designate what specific claim the authorizations pertained to, that such authoriza-

tions do not constitute general powers of attorney, and a motion was made to dismiss these appeals.

Section 31 of the Michigan Employment Security Act provides that any individual claiming benefits in any proceeding before the Commission or a court may be represented by counsel or other duly authorized agent.

Rule #12 of the Appeal Board provides that any party shall have the right to be represented by counsel or other duly authorized agent in connection with any appeal.

As concerns the instant appeals, no notice was received disavowing the actions taken in behalf of the claimants and the representation as made. Concerning the four claimants represented by Zwerdling & Zwerdling, Attorneys, notice of appearance was made and it was indicated that such firm represented these claimants, and no notice was received from the claimants to the contrary. No specific conditions are set forth under the section of the Act and the Appeal Board rule, abovementioned, for designating counsel or other duly authorized agent, and it is the opinion of the Referee that there was a substantial compliance with such provisions in these matters. Accordingly, the appeals filed herein are not so dismissed.

The General Motors Corporation is principally engaged in the manufacture and selling of automobiles, trucks and parts. The Corporation is organized on a division basis and has several divisions with many plants located in various areas, including other states. The Fisher Body Flint plant #1 is located in Flint, Michigan, and manufactures and assembles bodies for Buick automobiles which are transported to the Buick Motor Division also located in that city. Many of the parts necessary for the completion of Buick bodies are not manufactured at the Fisher Body Flint plant but are manufactured by other plants of this employer which are feeder or supplier plants. One such supplier plant is the Fisher Body Mansfield plant located in Ohio. This plant produced many parts and components for the Fisher Body Flint plant. It was pointed

out that production schedules were closely integrated, as the employer did not maintain large inventories. Consequently, the employer maintains a central office staff concerning production, scheduling and purchasing that works with the staffing of the various plants, and a continuous check is made as to the flow in such plants. A stoppage of production in an essential feeder plant would affect operations in other plants where the feeder parts are to be sent. Likewise, a stoppage of production in a final assembly plant could affect operations back into the feeder plants. The Mansfield, Ohio, plant produced certain parts for Buick body assembly which was the only source of supply for such parts.

On September 18, 1957, a strike began at the Fisher Body Mansfield plant, resulting in a stoppage of operations. No production occurred and no parts were shipped during such stoppage of work. A strike settlement was reached on September 26, 1957. The strike concerned certain issues involving working conditions in this particular plant. There was also an issue concerning apprentices.

At the Fisher Body Flint plant assembly operations ended in the first week of September, 1957. This plant was shut down for model change, and workers were laid off. Notices were posted by the employer as to when they were to return. The start-up date was September 23, 1957, although some sub-assembly employees were scheduled to return earlier on September 18, 1957. Other employees who had been on an indefinite layoff were also scheduled to return to work. When notice was received of the strike at the Mansfield plant, notices were then issued by the employer postponing the start-up date at the Flint plant. Upon settlement of the strike, notice was issued as to the new date that operations were to be resumed.

Postponement of the new models at this time was due to the interruption of production at the supplier plant in Ohio, causing lack of necessary parts and components to complete the Buick bodies.

The Buick Motor Division manufactures major components for the Buick automobiles, such as engines, axles, transmissions, chassis and assembles approximately 35 per cent of the Buick automobiles, the balance being assembled in other assembly plants. The building of its 1957 models was completed by September 10, 1957, and final car assembly was closed down. The majority of the employees were sent home except for a few on pilot jobs. Final car assembly was scheduled to resume on the new models beginning September 30, 1957, with certain employees being recalled in advance of that date, depending on the type of operations performed. In view of the strike at the Mansfield, Ohio, plant which curtailed production of parts for Buick bodies, it was found necessary to close down due to the shortage of bodies from the Fisher Body Flint plant. When the strike was settled, it was decided to recall the workers on the basis of the original schedule, but on a delayed basis of one week and one day. Employees were then notified to return to work in accordance with the amended schedule.

It was the contention of the claimants that they should not be disqualified for benefits during the periods of their unemployment caused by the labor dispute work stoppage, and there was reference to a recent decision from the Michigan Supreme Court, Docket No. 43, April Term 1958, dated January 12, 1959, in the case of Alexander Park, et al. v. Ford Motor Company, concerning a somewhat similar situation. It was the contention on behalf of the employer that the claimants for the respective periods set forth in the redeterminations of the Commission were unemployed due to a stoppage of work existing because of a labor dispute in the establishment in which they were employed and such claimants should be disqualified under the provisions of Section 29(1)(b) of the Michigan Employment Security Act. In this respect, reference was made to certain provisions contained in the agreement between the General Motors Corporation and the International Union, UAW-CIO, dated June 12, 1955, which agreement was in effect during the periods involved in these appeals.

Section 29 (1) (b) of the Michigan Employment Security Act provides as follows:

"Sec. 29. (1) An individual shall be disqualified for benefits:

"(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be directly involved in a labor dispute unless it is established:

"(1) That, at the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with 1 or more other employees have voluntarily stopped working other than at the direction of his employing unit, or

"(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

"(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, or

"(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs, he shall have become

unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed."

The first issue to be considered concerns whether the claimants come within the provisions of the first sentence in Section 29 (1) (b), above-quoted. The unemployment of the claimants for the periods involved herein was caused by the labor dispute work stoppage in the Mansfield, Ohio, plant. Question arises whether this plant and the Fisher Body Flint plant #1 and Buick Motor Division were all one establishment or whether the supplier plant located in another State was a separate establishment.

In this respect, reference is made to the recent decision from the Michigan Supreme Court dated January 12, 1959, above-mentioned, in which the claimants therein were laid off from Michigan plants of their employer because of the failure to receive delivery of forgings, essential to the operation of their departments, from another plant of the employer in Ohio. Non-delivery of such parts was the result of a stoppage of operations at the Ohio plant due to a strike. One of the issues involved concerned whether, as a matter of law, the functional integration of a company's manufacturing plants located in Michigan and several other states make them a single establishment within the meaning of the Michigan Employment Security Act. The Court pointed out that it had for consideration a disqualification argument applicable to non-striking employees in three Detroit area plants, all in Michigan, where the strike inducing the unemployment occurred in another community 150 miles away and in another State. The Court stated, in part, as follows:

"While we believe the appeal board and the circuit judge were right in terming the interpretation of the word 'establishment' the 'pivotal issue' of the case, we believe they were wrong in extending the definition of 'the establishment' employed in Chrysler v. Smith, supra. Indeed, on the basis of what has been said, we feel constrained to hold that to the extent that Chrysler v. Smith adopted 'integral functioning' as the basic test of the extent of 'the establishment' in the Michigan employment security act (CLS 1952, §421.29 (1) [Stat Ann 1953 Cum Supp §17.531(1)]), it is overruled.

"The appeal board found, on the point in question, and the circuit judge subsequently affirmed, the following:

'It is our opinion, and we so find, that the unemployment of the claimants in the case at bar was due to and grew out of a stoppage of work existing because of a labor dispute in the establishment in which they were last employed, and that all of the units of the Ford Motor Company, both in Michigan and Ohio, constituted 1 establishment within the meaning of that word as contained in the Michigan act.'

"For the reasons we have cited, we hold this finding erroneous as a matter of law."

Subsequent to the above-mentioned decision from the Michigan Supreme Court, an opinion was given to the Commission by the Attorney General for the State of Michigan concerning this issue, which pointed out in substance that in removing "integral functioning" as the basic or primary test, such appears to open the door to other factors as follows:

"1. Separate and distinct employment offices;

2. Separate and distinct local unions or local labor-management agreements;

3. Separate and distinct employee seniority rights;
4. Separate and distinct industrial relations offices;
5. Separate and distinct plant managements;
6. Separate and distinct plant production schedules;
7. Physical proximity of the operations;
8. General unity.

"In view of the foregoing, it is my opinion that if you were confronted with substantially the same facts as were present in the Chrysler case, you would not be warranted in making a determination allowing benefits without having reference to the factors suggested. The opinion of the Court strongly suggests that based upon the consideration of these factors it would today overrule the Chrysler case since it stated:

'In summary, it appears from the opinions filed in this matter that all participating members of this Court are in agreement that the majority interpretation of the words "the establishment" in Chrysler v. Smith, supra, was in error and that the interpretation placed thereon by Mr. Justice Carr as trial judge, and adopted by the minority of the Court in the Chrysler case, was correct.'

"As each case presents itself, I believe that, administratively, it is within your discretion to determine which of the foregoing factors, or combination thereof, shall control and that in any fact situation in which factors 1 through 6 control or predominate the Chrysler case should not be followed."

In the instant case, from the facts presented, it is found that the Fisher Body Flint plant and Buick Motor Division, as distinguished from the Fisher Body Ohio supplier plant of the employer, had separate employment offices. There were separate local unions and local labor management

agreements within their respective operations. In regard to employee seniority rights as set up in the agreement between the employer and the International Union, Paragraph 59, it is revealed therein that seniority shall be by non-interchangeable occupational groups within departments, group of departments or plant-wide, as may be negotiated locally in each plant and reduced to writing and be subject to the approval of the Corporation and the International Union.

These establishments had industrial relation offices, separate plant managements and production schedules, even though correlated through or with central office functions of the employer. It is found that the Fisher Body Flint plant and Buick Motor Division were separate establishments and were separate establishments from the Mansfield, Ohio, supplier plant.

The next question to be considered concerns whether there was a stoppage of work existing because of a labor dispute in the Fisher Body Flint plant and Buick Motor Division establishments. The above-mentioned agreement between the Corporation and the International UAW-CIO provides the following:

> "(118) The Union has requested this National Agreement in place of independent agreements for each bargaining unit covered thereby. Accordingly an authorized strike in one bargaining unit under this Agreement which results in an interruption of the flow of material or services to operations in any other bargaining unit under this Agreement, will be considered an authorized strike in any such affected bargaining unit.
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> "(148) With respect to any matter that is to be negotiated locally the Corporation will fully inform the Union and the Union will fully inform the Corporation, as to the limits, if any, set by higher authority upon the scope of the local negotiations.

"(149) No provisions of any local agreements between local Plant Managements and Shop Committees therein shall supersede or conflict with any provisions of this Agreement."

It was pointed out that the provisions of Paragraph 118, above-cited, has been a part of the agreements between the employer and the union over a period of many years without change. It was contended that the claimants herein were bound by such provisions made in their behalf through their union representatives, and in this respect, reference was made to a decision from the Michigan Supreme Court dated December 28, 1956, 347 Mich. 465 (B1-2927-13652). It was further contended that the claimants came within the provisions of this part of the contract and accordingly they were subject to disqualification under the Act. In behalf of the claimants, reference was made to Section 31 of the Act which provides, in part, that no agreement by an individual to waive, release or commute his rights to benefits or any other rights under this Act from an employer shall be valid.

In the case cited by counsel for the employer, 347 Mich. 465, above-mentioned, the matter involved therein concerned eligibility for benefits for a vacation period scheduled by the employer in accordance with a contract made between such employer and the union in which certain claimants were not eligible or entitled to vacation payment. It was held that such claimants were voluntarily unemployed during the week in question and for that reason were not entitled to compensation. The Court in its decision stated, in part, as follows:

"The right of a labor union to bind its members, for whom it is the sole collective-bargaining agency, by a contract of the character here involved was recognized by this Court in Chrysler Corp. v. Smith, 297 Mich 438, and in General Motors Corporation v. Unemployment Compensation Commission, 331 Mich 303.

"As before stated, the question here involved is one of first impression in Michigan. Counsel have called attention to Hubbard v. Unemployment Compensation Commission, 328 Mich 444. However, the question there at issue was essentially different from that presented here. As pointed out in the opinion of the Court, the contract between the employer and the union to which claimants belonged did not provide for a vacation. In Renown Stove Company v. Unemployment Compensation Commission, 328 Mich 436, it was declared that the objective sought to be gained by the legislature in the enactment of the statute was protection against evils incident to involuntary unemployment. This case likewise presented a different factual situation, and different issues, than are before us in the instant proceeding.

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"The statute may not be regarded as prohibiting an agreement between employer and employee with reference to a vacation for the latter, to be taken at a fixed time. Such an agreement would be equally binding whether made by the employee personally or by his union in his behalf. We think the claim advanced is well answered by the Minnesota Supreme Court in Jackson v. Minneapolis-Honeywell Regulator Company, supra. It was there said:

'The agreement is not one to waive rights to benefits which an employe otherwise would be entitled to, but an agreement for a two weeks' vacation leave or voluntary absence from work. An agreement between the employer and its employe providing for a two weeks' leave for the individual employe certainly cannot be interpreted to mean an agreement to waive benefits and therefore prohibited. Such an agreement made collectively by the union should not be placed in a different status. There is an important distinction between an agreement for a leave or vacation shut-down which gives rise to no unem-

ployment compensation benefits and a collusive agreement that unemployment compensation benefits be waived.'"

In the instant case as concerns the objection raised in behalf of the claimants, it is the opinion of the Referee that the above-mentioned provisions of the agreement, above-quoted, do not come within the category as above cited, of being "a collusive agreement that unemployment compensation benefits be waived." Such provisions set forth the extent and scope of an authorized strike within the limitations provided therein.

The language as set forth under Paragraph 118 of the contract between the employer and the union, above-quoted, is clear and unambiguous, not necessitating the making of an interpretation.

In the instant case there was a stoppage of work due to a labor dispute in the Mansfield, Ohio, plant of the employer which resulted in an interruption of the manufacture and delivery involving the flow of necessary parts to the Fisher Body Flint plant and the Buick Motor Division which caused a stoppage of work and interruption within these establishments. The claimants were parties through their union to such provisions of the agreement, and it is therefore found there was a stoppage of work because of a labor dispute within the establishments of the Fisher Body Flint plant and the Buick Motor Division.

Question arises whether the above finding is sufficient under the Act to disqualify the claimants for benefits. The proviso under Section 29 (1) (b), above-quoted, provides that no individual shall be disqualified under this section if it is established he is not directly involved in such dispute, and no individual shall be deemed to be directly involved in a labor dispute unless certain conditions are established as set forth under subsections (1) through (4).

The Michigan Supreme Court in its decision of January 12, 1959, above-mentioned, stated as follows:

"The proviso and the subsections are plainly designed to allow compensation to some claimants held not 'directly involved' under the definitions therein when otherwise they would be disqualified under the terms of the first sentence."

It is evident, as concerns the matters involved in these appeals, that it must be established that the claimants come within the provisions of direct involvement as set forth under the Act to be subject to disqualification even though it is found there was a stoppage of work existing because of a labor dispute within the establishment of their employment. As concerns Section 29 (1) (b) (1), it was not shown that the claimants herein had voluntarily stopped working other than at the direction of their employing unit. The facts disclosed that the workers had been on a model change layoff and were scheduled to return to work at a certain date, which was postponed by notice from the employer. Consequently, the provisions of this subsection are not found applicable.

Under Section 29 (1) (b) (2), it was not shown that these claimants were participating in or financing or directly interested in the labor dispute which caused the stoppage of work. In this respect, it was revealed that the issues resulting in the labor dispute at the Mansfield, Ohio, plant were local matters concerning working conditions involving the employees in such plant. It was not shown that the wages, hours or working conditions of the claimants herein were involved in such labor dispute. It was brought out that certain matters concerning apprentices were involved in the dispute at the Ohio plant, and that agreement reached in this respect covered approximately 20 different units of the employer, none of which, however, concerned apprentices at the Fisher Body and Buick Motor Division plants in Flint. Further, the national agreement was not shown to have been opened for negotiation at this time. It is therefore found that the provisions of this subsection are not applicable to the claimants.

As concerns Section 29 (1) (b) (3), the claimants had not voluntarily stopped working other than at the direction of their employing unit, and consequently the provisions of this subsection are not found to be applicable.

The provisions of Section 29 (1) (b) (4) are more broad in scope and include situations not involved under the first three subsections. This subsection makes reference to employing unit to which the worker belongs, and the same employing unit by whom the worker was then employed. Employing unit is a defined term under the Michigan Employment Security Act, and Section 40 of the Act provides, in part:

> "Sec. 40. 'Employing unit' means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to this amendatory act, had in its employ 1 or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act."

As above set forth, an employing unit which maintains two or more separate establishments within this State is deemed to be a single employing unit. Although this clause does not specifically exclude establishments of a single employing unit, which establishments are maintained outside of this State; neither does it make provision for including same. It is the opinion of the Referee that a single employing unit maintaining two or more establishments only refers to those establishments maintained within this State for the purposes of this Act. Consequently, it is not found that the Fisher Body Mansfield plant in Ohio is included

as a part of the same employing unit as that consisting of Fisher Body Flint plant #1 and Buick Motor Division, and other establishments of this employer maintained within this State. If the Fisher Body Mansfield plant had been located and maintained within this State, this matter would have presented and resulted in a different finding. However, such are not the facts in this case.

As above-mentioned, even though there was a stoppage of work due to labor dispute in the establishments of the Fisher Body Flint plant #1 and Buick Motor Division, nevertheless, such in itself is not conclusive for disqualification purposes if the individual is not directly involved in such dispute within the provisions set forth under subsections (1), (2), (3) or (4) of this Section. It is specifically provided that no individual shall be deemed to be directly involved in the labor dispute unless it is established he comes within one of such provisions. It was not shown there was any actual labor dispute in the particular departments or units in which the claimants herein were employed; nor was it shown there was a labor dispute among the grade or class of workers *within the employing unit* to which they belonged. Further, it is not found that the claimants' unemployment for the periods involved was because of a stoppage of work in their particular departments or units or among the grade or class of workers to which they belonged, which stoppage of work was due to a labor dispute which was in progress in some other department or unit or among a different grade or class of workers *of the same employing unit* by whom they were then employed. It is therefore found that the claimants do not come within the provisions of subsection (4) of Section 29 (1) (b) of the Act, and no disqualification is imposed thereunder.

Decision

The redeterminations issued by the Commission on June 10, 1958, to the claimants covered by this decision are such hereby reversed.

It is held that the claimants are not subject to disqualification for benefits under the provisions of Section 29 (1) (b) of the Michigan Employment Security Act for the respective periods of their unemployment coming within the weeks ending September 21, 1957, through week ending October 19, 1957.

/s/ Wesleyan Voigt,
Referee

Dated at Detroit, Michigan, and mailed on June 27, 1960.

IMPORTANT

This Decision will become final unless a request for rehearing before the Referee, supported by valid reasons *or* an appeal to the Appeal Board is filed on or before July 12, 1960.

Information and necessary forms for an appeal to the Appeal Board may be obtained from the Secretary of the Appeal Board or from the Employment and Claims Interviewer in any Branch Office of the Commission.

APPENDIX A-2

Decision

(Michigan Employment Security Commission, Referee Section)

In the Matter of the Claim of Donald R. Sorensen, et al., 6088 Stoney Point, Flint 6, Michigan.

SS No. 369-30-8217.

Referee—Wesleyan Voigt.

Employer involved—Buick Motor Division, GMC, E. Hamilton Avenue, Flint, Michigan.

Appeal No. B59-4901 (2521) et al. (See attached list.)

FINDINGS OF FACTS AND REASONS

On June 10, 1958, *Notices of Redeterminations were issued by the Commission which held in substance that the claimants whose names appear on the list attached hereto were disqualified under the provisions of Section 29 (1) (b) (4) of the Act from receiving unemployment benefits for various periods coming within the weeks ending September 21, 1957 through week ending October 19, 1957, as applicable. It was further set forth that a stoppage of work due to a labor dispute occurred at the Fisher Body Mansfield, Ohio, plant of General Motors Corporation from September 18, 1957, through September 26, 1957. This plant produces parts necessary for the production of Buick automobile bodies, and the operation of such plant was functionally integrated with the operations of Fisher Body Flint plant #1 and the Buick Motor Division. Buick Motor Division depends upon Fisher Body Flint plant #1 for auto bodies and Fisher Body Flint plant #1 depends upon the Fisher Body Mansfield plant for body parts. These plants were therefore considered as one establishment, and the claimants' unemployment resulted from the effects of the Mansfield labor dispute upon the employer's operations.*

Timely appeals were filed on June 13, 1958, on behalf of the claimants by their representative, Clayton E. Johnson. All claimants herein were employees of the Buick Motor Division. Similar notices of redeterminations were also issued by the Commission to claimants who were employed at the Fisher Body Flint Plant #1 and timely appeals were filed on their behalf by their representative, Clayton E. Johnson. These appeals are covered by a separate decision B59-4901 (1002) et al. In addition thereto, there were several appeals involving claimants, some of which were employed at the Fisher Body Flint plant #1 and others at the Buick Motor Division, to which specific objections were made involving the jurisdiction of the Referee, and such matters are covered in separate decisions.

By agreement of the parties, consolidated hearings were held on all such appeals, above-mentioned, on February 23, 24, 25, March 28, 29, 31, April 5, 21 and May 9, 1960. The employer was represented by Henry M. Hogan, General Counsel (K. Douglas Mann, of counsel). Clayton E. Johnson, with Thomas Doherty, appeared on behalf of the claimants, with the exception of four claimants, namely, Robert H. Stinson, Donald R. Sorensen, Walter Skidmore and George Montgomery. These four claimants were represented by Zwerdling & Zwerdling, Attorneys (A. L. Zwerdling, of counsel). Dan Merrill of the Commission's Flint Branch Office appeared for the Commission. Some of the claimants were also present. Witnesses who appeared and testified are listed by name as follows: Earl Bramblett, John P. Bender, Robert B. Moran, George E. Sullivan, Robert M. Wagner, George A. Lincoln, Stephen M. DuBrul.

The individual appeals on behalf of the claimants herein were filed through their representative on the basis of separate written authorizations filed by each of such claimants. It was the contention of the employer that such individual authorizations did not designate what specific claim the authorizations pertained to, that such authorizations do not constitute general powers of attorney, and a motion was made to dismiss these appeals.

Section 31 of the Michigan Employment Security Act provides that any individual claiming benefits in any proceeding before the Commission or a court may be represented by counsel or other duly authorized agent.

Rule #12 of the Appeal Board provides that any party shall have the right to be represented by counsel or other duly authorized agent in connection with any appeal.

As concerns the instant appeals, no notice was received disavowing the actions taken in behalf of the claimants and the representation as made. Concerning the four claimants represented by Zwerdling & Zwerdling, Attorneys, notice of appearance was made and it was indicated that such firm represented these claimants, and no notice was received from the claimants to the contrary. No specific conditions are set forth under the section of the Act and the Appeal Board rule, above-mentioned, for designating counsel or other duly authorized agent, and it is the opinion of the Referee that that there was a substantial compliance with such provisions in these matters. Accordingly, the appeals filed herein are not so dismissed.

The General Motors Corporation is principally engaged in the manufacture and selling of automobiles, trucks and parts. The Corporation is organized on a division basis and has several divisions with many plants located in various areas, including other states. The Fisher Body Flint plant #1 is located in Flint, Michigan, and manufactures and assembles bodies for Buick automobiles which are transported to the Buick Motor Division also located in that city. Many of the parts necessary for the completion of Buick bodies are not manufactured at the Fisher Body Flint plant but are manufactured by other plants of this employer which are feeder or supplier plants. One such supplier plant is the Fisher Body Mansfield plant located in Ohio. This plant produced many parts and components for the Fisher Body Flint plant. It was pointed out that production schedules were closely integrated, as the em-

ployer did not maintain large inventories. Consequently, the employer maintains a central office staff concerning production, scheduling and purchasing that works with the staffing of the various plants, and a continuous check is made as to the flow in such plants. A stoppage of production in an essential feeder plant would affect operations in other plants where the feeder parts are to be sent. Likewise, a stoppage of production in a final assembly plant could affect operations back into the feeder plants. The Mansfield, Ohio, plant produced certain parts for Buick body assembly which was the only source of supply for such parts.

On September 18, 1957, a strike began at the Fisher Body Mansfield plant, resulting in a stoppage of operations. No production occurred and no parts were shipped during such stoppage of work. A strike settlement was reached on September 26, 1957. The strike concerned certain issues involving working conditions in this particular plant. There was also an issue concerning apprentices.

At the Fisher Body Flint plant assembly operations ended in the first week of September, 1957. This plant was shut down for model change, and workers were laid off. Notices were posted by the employer as to when they were to return. The start-up date was September 23, 1957, although some sub-assembly employees were scheduled to return earlier on September 18, 1957. Other employees who had been on an indefinite layoff were also scheduled to return to work. When notice was received of the strike at the Mansfield plant, notices were then issued by the employer postponing the start-up date at the Flint plant. Upon settlement of the strike, notice was issued as to the new date that operations were to be resumed.

Postponement of the new models at this time was due to the interruption of production at the supplier plant in Ohio, causing lack of necessary parts and components to complete the Buick bodies.

The Buick Motor Division manufactures major components for the Buick automobiles, such as engines, axles, transmissions, chassis and assembles approximately 35 per cent of the Buick automobiles, the balance being assembled in other assembly plants. The building of its 1957 models was completed by September 10, 1957, and final car assembly was closed down. The majority of the employees were sent home except for a few on pilot jobs. Final car assembly was scheduled to resume on the new models beginning September 30, 1957, with certain employees being recalled in advance of that date, depending on the type of operations performed. In view of the strike at the Mansfield, Ohio, plant which curtailed production of parts for Buick bodies, it was found necessary to close down due to the shortage of bodies from the Fisher Body Flint plant. When the strike was settled, it was decided to recall the workers on the basis of the original schedule, but on a delayed basis of one week and one day. Employees were then notified to return to work in accordance with the amended schedule.

It was the contention of the claimants that they should not be disqualified for benefits during the periods of their unemployment caused by the labor dispute work stoppage, and there was reference to a recent decision from the Michigan Supreme Court, Docket No. 43, April Term 1958, dated January 12, 1959, in the case of Alexander Park, et al. v. Ford Motor Company, concerning a somewhat similar situation. It was the contention on behalf of the employer that the claimants for the respective periods set forth in the redetermination of the Commission were unemployed due to a stoppage of work existing because of a labor dispute in the establishment in which they were employed and such claimants should be disqualified under the provisions of Section 29(1)(b) of the Michigan Employment Security Act. In this respect, reference was made to certain provisions contained in the agreement between the General Motors Corporation and the International Union, UAW-CIO, dated June 12, 1955, which agreement was in effect during the periods involved in these appeals.

Section 29(1)(b) of the Michigan Employment Security Act provides as follows:

"Sec. 29. (1) An individual shall be disqualified for benefits:

"(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be directly involved in a labor dispute unless it is established:

"(1) That, at the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with 1 or more other employees have voluntarily stopped working other than at the direction of his employing unit, or

"(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

"(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, or

"(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs, he shall have

become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed."

The first issue to be considered concerns whether the claimants come within the provisions of the first sentence in Section 29 (1) (b), above-quoted. The unemployment of the claimants for the periods involved herein was caused by the labor dispute work stoppage in the Mansfield, Ohio, plant. Question arises whether this plant and the Fisher Body Flint plant #1 and Buick Motor Division were all one establishment or whether the supplier plant located in another State was a separate establishment.

In this respect, reference is made to the recent decision from the Michigan Supreme Court dated January 12, 1959, above-mentioned, in which the claimants therein were laid off from Michigan plants of their employer because of the failure to receive delivery of forgings, essential to the operation of their departments, from another plant of the employer in Ohio. Non-delivery of such parts was the result of a stoppage of operations at the Ohio plant due to a strike. One of the issues involved concerned whether, as a matter of law, the functional integration of a company's manufacturing plants located in Michigan and several other states make them a single establishment within the meaning of the Michigan Employment Security Act. The Court pointed out that it had for consideration a disqualification argument applicable to non-striking employees in three Detroit area plants, all in Michigan, where the strike inducing the unemployment occurred in another community 150 miles away and in another State. The Court stated, in part, as follows:

"While we believe the appeal board and the circuit judge were right in terming the interpretation of the

word 'establishment' the 'pivotal issue' of the case, we believe they were wrong in extending the definition of 'the establishment' employed in Chrysler v. Smith, supra. Indeed, on the basis of what has been said, we feel constrained to hold that to the extent that Chrysler v. Smith adopted 'integral functioning' as the basic test of the extent of 'the establishment' in the Michigan employment security act (CLS 1952, §421.29(1) [Stat Ann 1953 Cum Supp §17.531 (1)]), it is overruled.

"The appeal board found, on the point in question, and the circuit judge subsequently affirmed, the following:

'It is our opinion, and we so find, that the unemployment of the claimants in the case at bar was due to and grew out of a stoppage of work existing because of a labor dispute in the establishment in which they were last employed, and that all of the units of the Ford Motor Company, both in Michigan and Ohio, constituted 1 establishment within the meaning of that word as contained in the Michigan act.'

"For the reasons we have cited, we hold this finding erroneous as a matter of law."

Subsequent to the above-mentioned decision from the Michigan Supreme Court, an opinion was given to the Commission by the Attorney General for the State of Michigan concerning this issue, which pointed out in substance that in removing "integral functioning" as the basic or primary test, such appears to open the door to other factors as follows:

"1. Separate and distinct employment offices;

2. Separate and distinct local unions or local labor-management agreements;

3. Separate and distinct employee seniority rights;

4. Separate and distinct industrial relations offices;
5. Separate and distinct plant managements;
6. Separate and distinct plant production schedules;
7. Physical proximity of the operations;
8. General unity.

"In view of the foregoing, it is my opinion that if you were confronted with substantially the same facts as were present in the Chrysler case, you would not be warranted in making a determination allowing benefits without having reference to the factors suggested. The opinion of the Court strongly suggests that based upon the consideration of these factors it would today overrule the Chrysler case since it stated:

> 'In summary, it appears from the opinions filed in this matter that all participating members of this Court are in agreement that the majority interpretation of the words "the establishment" in Chrysler v. Smith, supra, was in error and that the interpretation placed thereon by Mr. Justice Carr as trial judge, and adopted by the minority of the Court in the Chrysler case, was correct.'

"As each case presents itself, I believe that, administratively, it is within your discretion to determine which of the foregoing factors, or combination thereof, shall control and that in any fact situation in which factors 1 through 6 control or predominate the Chrysler case should not be followed."

In the instant case, from the facts presented, it is found that the Fisher Body Flint plant and Buick Motor Division, as distinguished from the Fisher Body Ohio supplier plant of the employer, had separate employment offices. There were separate local unions and local labor management agreements within their respective operations. In regard to employee seniority rights as

set up in the agreement between the employer and the International Union, Paragraph 59, it is revealed therein that seniority shall be by non-interchangeable occupational groups within departments, group of departments or plant-wide, as may be negotiated locally in each plant and reduced to writing and be subject to the approval of the Corporation and the International Union.

These establishments had industrial relation offices, separate plant managements and production schedules, even though correlated through or with central office functions of the employer. It is found that the Fisher Body Flint plant and Buick Motor Division were separate establishments and were separate establishments from the Mansfield, Ohio, supplier plant.

The next question to be considered concerns whether there was a stoppage of work existing because of a labor dispute in the Fisher Body Flint plant and Buick Motor Division establishments. The above-mentioned agreement between the Corporation and the International UAW-CIO provides the following:

"(118) The Union has requested this National Agreement in place of independent agreements for each bargaining unit covered thereby. Accordingly an authorized strike in one bargaining unit under this Agreement which results in an interruption of the flow of material or services to operations in any other bargaining unit under this Agreement, will be considered an authorized strike in any such affected bargaining unit.

* * * * *

"(148) With respect to any matter that is to be negotiated locally the Corporation will fully inform the Union and the Union will fully inform the Corporation, as to the limits, if any, set by higher authority upon the scope of the local negotiations.

"(149) No provisions of any local agreements between local Plant Managements and Shop Committees therein shall supersede or conflict with any provisions of this Agreement."

It was pointed out that the provisions of Paragraph 118, above-cited, has been a part of the agreements between the employer and the union over a period of many years without change. It was contended that the claimants herein were bound by such provisions made in their behalf through their union representatives, and in this respect, reference was made to a decision from the Michigan Supreme Court dated December 28, 1956. 347 Mich. 465 (B1-2927-13652). It was further contended that the claimants came within the provisions of this part of the contract and accordingly they were subject to disqualification under the Act. In behalf of the claimants, reference was made to Section 31 of the Act which provides, in part, that no agreement by an individual to waive, release or commute his rights to benefits or any other rights under this Act from an employer shall be valid.

In the case cited by counsel for the employer, 347 Mich. 465, above-mentioned, the matter involved therein concerned eligibility for benefits for a vacation period scheduled by the employer in accordance with a contract made between such employer and the union in which certain claimants were not eligible or entitled to vacation payment. It was held that such claimants were voluntarily unemployed during the week in question and for that reason were not entitled to compensation. The Court in its decision stated, in part, as follows:

> "The right of a labor union to bind its members, for whom it is the sole collective-bargaining agency, by a contract of the character here involved was recognized by this Court in Chrysler Corp. v. Smith, 297 Mich 438, and in General Motors Corporation v. Unemployment Compensation Commission, 331 Mich 303.
>
> "As before stated. the question here involved is one of first impression in Michigan. Counsel have called attention to Hubbard v. Unemployment Compensation Commission, 328 Mich 444. However, the question there at issue was essentially different from that pre-

sented here. As pointed out in the opinion of the Court, the contract between the employer and the union to which claimants belonged did not provide for a vacation. In Renown Stove Company v. Unemployment Compensation Commission, 328 Mich 436, it was declared that the objective sought to be gained by the legislature in the enactment of the statute was protection against evils incident to involuntary unemployment. This case likewise presented a different factual situation, and different issues, than are before us in the instant proceeding.

• • • • •

"The statute may not be regarded as prohibiting an agreement between employer and employee with reference to a vacation for the latter, to be taken at a fixed time. Such an agreement would be equally binding whether made by the employee personally or by his union in his behalf. We think the claim advanced is well answered by the Minnesota Supreme Court in Jackson v. Minneapolis-Honeywell Regulator Company, supra. It was there said:

> 'The agreement is not one to waive rights to benefits which an employe otherwise would be entitled to, but an agreement for a two weeks' vacation leave or voluntary absence from work. An agreement between the employer and its employe providing for a two weeks' leave for the individual employe certainly cannot be interpreted to mean an agreement to waive benefits and therefore prohibited. Such an agreement made collectively by the union should not be placed in a different status. There is an important distinction between an agreement for a leave or vacation shut-down which gives rise to no unemployment compensation benefits and a collusive agreement that unemployment compensation benefits be waived.'"

In the instant case as concerns the objection raised in behalf of the claimants, it is the opinion of the Referee

that the above-mentioned provisions of the agreement, above-quoted, do not come within the category as above cited, of being "a collusive agreement that unemployment compensation benefits be waived." Such provisions set forth the extent and scope of an authorized strike within the limitations provided therein.

The language as set forth under Paragraph 118 of the contract between the employer and the union, above-quoted, is clear and unambiguous, not necessitating the making of an interpretation.

In the instant case there was a stoppage of work due to a labor dispute in the Mansfield, Ohio, plant of the employer which resulted in an interruption of the manufacture and delivery involving the flow of necessary parts to the Fisher Body Flint plant and the Buick Motor Division which caused a stoppage of work and interruption within these establishments. The claimants were parties through their union to such provisions of the agreement, and it is therefore found there was a stoppage of work because of a labor dispute within the establishments of the Fisher Body Flint plant and the Buick Motor Division.

Question arises whether the above finding is sufficient under the Act to disqualify the claimants for benefits. The proviso under Section 29 (1) (b), above-quoted, provides that no individual shall be disqualified under this section if it is established he is not directly involved in such dispute, and no individual shall be deemed to be directly involved in a labor dispute unless certain condition are established as set forth under subsections (1) through (4).

The Michigan Supreme Court in its decision of January 12, 1959, above-mentioned, stated as follows:

> "The proviso and the subsections are plainly designed to allow compensation to some claimants held not 'directly involved' under the definitions therein when otherwise they would be disqualified under the terms of the first sentence."

It is evident, as concerns the matters involved in these appeals, that it must be established that the claimants come

within the provisions of direct involvement as set forth under the Act to be subject to disqualification even though it is found there was a stoppage of work existing because of a labor dispute within the establishment of their employment. As concerns Section 29 (1) (b)(1), it was not shown that the claimants herein had voluntarily stopped working other than at the direction of their employing unit. The facts disclosed that the workers had been on a model change layoff and were scheduled to return to work at a certain date, which was postponed by notice from the employer. Consequently, the provisions of this subsection are not found applicable.

Under Section 29 (1) (b) (2), it was not shown that these claimants were participating in or financing or directly interested in the labor dispute which caused the stoppage of work. In this respect, it was revealed that the issues resulting in the labor dispute at the Mansfield, Ohio, plant were local matters concerning working conditions involving the employees in such plant. It was not shown that the wages, hours or working conditions of the claimants herein were involved in such labor dispute. It was brought out that certain matters concerning apprentices were involved in the dispute at the Ohio plant, and that agreement reached in this respect covered approximately 20 different units of the employer, none of which, however, concerned apprentices at the Fisher Body and Buick Motor Division plants in Flint. Further, the national agreement was not shown to have been opened for negotiation at this time. It is therefore found that the provisions of this subsection are not applicable to the claimants.

As concerns Section 29 (1) (b) (3), the claimants had not voluntarily stopped working other than at the direction of their employing unit, and consequently the provisions of this subsection are not found to be applicable.

The provisions of Section 29 (1) (b) (4) are more broad in scope and include situations not involved under the first three subsections. This subsection makes reference to employing unit to which the worker belongs, and the same em-

ploying unit by whom the worker was then employed. Employing unit is a defined term under the Michigan Employment Security Act, and Section 40 of the Act provides, in part:

> "Sec. 40. 'Employing unit' means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to this amendatory act, had in its employ 1 or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act."

As above set forth, an employing unit which maintains two or more separate establishments within this State is deemed to be a single employing unit. Although this clause does not specifically exclude establishments of a single employing unit, which establishments are maintained outside of this State; neither does it make provision for including same. It is the opinion of the Referee that a single employing unit maintaining two or more establishments only refers to those establishments maintained within this State for the purposes of this Act. Consequently, it is not found that the Fisher Body Mansfield plant in Ohio is included as a part of the same employing unit as that consisting of Fisher Body Flint plant #1 and Buick Motor Division, and other establishments of this employer maintained within this State. If the Fisher Body Mansfield plant had been located and maintained within this State, this matter would have presented and resulted in a different finding. However, such are not the facts in this case.

As above-mentioned, even though there was a stoppage of work due to labor dispute in the establishments of the

Fisher Body Flint plant #1 and Buick Motor Division, nevertheless, such in itself is not conclusive for disqualification purposes if the individual is not directly involved in such dispute within the provisions set forth under subsections (1), (2), (3) or (4) of this Section. It is specifically provided that no individual shall be deemed to be directly involved in the labor dispute unless it is established he comes within one of such provisions. It was not shown there was any actual labor dispute in the particular departments or units in which the claimants herein were employed; nor was it shown there was a labor dispute among the grade or class of workers *within the employing unit* to which they belonged. Further, it is not found that the claimants' unemployment for the periods involved was because of a stoppage of work in their particular departments or units or among the grade or class of workers to which they belonged, which stoppage of work was due to a labor dispute which was in progress in some other department or unit or among a different grade or class of workers *of the same employing unit* by whom they were then employed. It is therefore found that the claimants do not come within the provisions of subsection (4) of Section 29 (1) (b) of the Act, and no disqualification is imposed thereunder.

Decision

The redeterminations issued by the Commission on June 10, 1958, to the claimants covered by this decision are each hereby reversed.

It is held that the claimants are not subject to disqualification for benefits under the provisions of Section 29 (1) (b) of the Michigan Employment Security Act for the respective periods of their unemployment coming within the weeks ending September 21, 1957, through week ending October 19, 1957.

/s/ Wesleyan Voigt,
Referee

Dated at Detroit Michigan, and mailed on June 27, 1960.

IMPORTANT

This Decision will become final unless a request for rehearing before the Referee, supported by valid reasons, *or* an appeal to the Appeal Board is filed on or before July 12, 1960.

Information and necessary forms for an appeal to the Appeal Board may be obtained from the Secretary of the Appeal Board or from the Employment and Claims Interviewer in any Branch Office of the Commission.

APPENDIX A-3

Decision of Appeal Board

(Robert H. Stinson, et al.)

(Michigan Employment Security Appeal Board)

These matters arose on the claim for unemployment benefits made by the individuals whose names and claims designations are set forth in the list attached hereto and by reference made a part hereof.

These matters came before this Appeal Board on the appeals of the employer from a decision of the Referee in respect to said claims issued on June 27, 1960, a copy of which Referee's decision is attached hereto and by reference made a part hereof.

This Appeal Board, having listened to the arguments of the parties in interest, having read the records, and being informed in the premises, is of the opinion that said Referee's decision is in conformity with the law and the facts.

The decision of the Referee is hereby affirmed.

/s/ Jack Moskowitz, Chairman
/s/ Kennett A. Hull, Member
/s/ Charles S. Brown, Member

State of Michigan,
County of Wayne—ss.

I, D. A. Kusch, Executive Secretary of the Employment Security Appeal Board, do hereby certify that the above and foregoing is a true and correct copy of the Decision of the Appeal Board mailed in the above entitled matter on March 31, 1961.

D. A. Kusch,
Executive Secretary, Appeal Board.

APPENDIX A-4

Decision of Appeal Board

(Donald R. Sorensen, et al.)

(Michigan Employment Security Appeal Board)

These matters arose on the claim for unemployment benefits made by the individuals whose names and claims designations are set forth in the list attached hereto and by reference made a part hereof.

These matters came before this Appeal Board on the appeals of the employer from a decision of the Referee in respect to said claims issued on June 27, 1960, a copy of which Referee's decision is attached hereto and by reference made a part hereof.

This Appeal Board, having listened to the arguments of the parties in interest, having read the records, and being informed in the premises, is of the opinion that said Referee's decision is in conformity with the law and the facts.

The decision of the Referee is hereby affirmed.

/s/ Jack Moskowitz, Chairman
/s/ Kennett A. Hull, Member
/s/ Charles S. Brown, Member.

State of Michigan,
County of Wayne—ss.

I, D. A. Kusch, Executive Secretary of the Employment Security Appeal Board, do hereby certify that the above and foregoing is a true and correct copy of the Decision of the Appeal Board mailed in the above entitled matter on March 31, 1961.

D. A. Kusch,
Executive Secretary, Appeal Board.

APPENDIX A-5

Opinion of the Court

(General Motors Corporation v.
MESC Appeal Board, et al.)

(Filed May 9, 1963)

(In the Circuit Court for the County of Ingham)

Claimants seek unemployment compensation benefits for a period of time while they were unemployed because of a strike at the Mansfield, Ohio, plant of General Motors Corporation. The Mansfield plant manufactured essential components without which the Fisher Body and Buick Motor Divisions could not operate. Claimants had been laid off for a model changeover, and the result of the Mansfield strike was to delay claimants' return to work. It is for this period of delay that compensation benefits are sought.

The case here presented is essentially the same as that in *Park v. Employment Security Commission*, 355 Michigan, 613, except that the contract in force between the union and the employer in the instant case contained the following paragraph:

> "The Union has requested this National Agreement in place of independent agreements for each bargaining unit covered thereby. Accordingly an authorized strike in one bargaining unit under this agreement

> which results in an interruption in the flow of material or services to operations in any other bargaining unit under this agreement, will be considered an authorized strike in any such affected bargaining unit."

The Referee and the Appeal Board found that there was a stoppage of work because of a labor dispute within the establishments of the Fisher Body Flint plant and the Buick Motor Division and that the claimants therefore came under the basic disqualification clause of the statute. With this finding the Court is in agreement.

Both the Referee and the Appeal Board held that the basic disqualification did not apply to these claimants because there was no direct involvement under Section 29 (1) (b) (4) of the Act. The direct involvement proviso of the Act, as construed by the Michigan Supreme Court in the case of *General Motors Corporation v. Unemployment Compensation Commission,* 321 Mich. 604, reads as follows:

> "Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section no individual shall be deemed to be directly involved in a labor dispute if (unless) it is established: (4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs, he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed."

This Court cannot accept the legal and logical acrobatics indulged in by the Referee and the Appeal Board in holding that the above quoted sections of the statute exempted

claimants from disqualification. It defies the mathematical law that the whole must necessarily include all of its parts. If the whole establishment is on an authorized strike and subject to a labor dispute, it follows that each department and unit is likewise on authorized strike and involved in a labor dispute.

The statute places the burden of escaping disqualification under the proviso on the employee. It says that no individual shall be disqualified *"if he shall establish"* certain facts. The Referee and the Appeal Board hold that claimants are entitled to benefits because the provisions of subparagraph (4) are not shown to be established. The opinion of the Referee says, "It was not shown there was an actual labor dispute in the particular departments or units." It says, "It is not found that claimants' unemployment * * * was because of a stoppage of work * * * due to a labor dispute * * * in some other department or unit * * * of the same employing unit."

The statute pre-supposes that there will be some evidence upon the basis of which a positive finding can be made. The Referee substitutes, for the positive evidence the statute requires, a lack of evidence, and concludes that since there is no evidence, the requirement of positive evidence has been met. He shifts the burden of proving exemption from disqualification from the employee, where the statute places it, to the employer and converts it into a burden of proving disqualification. He then finds that the employer has not sustained this new, illegal and unintended burden of proof, and concludes, therefore. that the employee has sustained the statutory burden and is entitled to benefits.

But if logic is to prevail, even this devious path fails. For, having determined that the whole establishment is out on an authorized strike, and involved in a labor dispute, the employee's particular department or unit must necessarily also be out on strike and involved in a labor dispute. It cannot be said that the whole Fisher Body No. 1 plant is on authorized strike, but that none of the particular departments or units are. Hence, the Referee's finding that

it was not shown that there was an (actual) labor dispute in the particular departments or units is not supported by any evidence and cannot stand, unless there is some basis in the law for a distinction between "labor dispute" as used in the statute and "actual labor dispute" as used in the Referee's opinion, and this Court knows of no such authorized or permitted distinction.

It having been established that claimants' unemployment was due to a labor dispute in the establishment in which he was employed, and it not having been established that claimants are exempt from disqualification under Section 29 (1) (b) (4), it follows that the claims for benefits should be denied unless the provision of the contract, under which the finding of a labor dispute in the establishment was made, is void as contravening the provisions of Section 31 of the Act.

Claimants argue that the validity of Paragraph 118 is to be tested and determined solely on the basis of results, and, if the provision results in disqualification, it is a collusive and void waiver of benefits. This is not the law of this State. It has been determined that an agreement, voluntarily entered into between employer and employee, covering a lawful subject of collective bargaining, is not an agreement to waive benefits even though the agreement may have a collateral effect on the employment status of the individual and result in disqualifying from benefits certain employees who otherwise would be entitled thereto. This Court finds no rational basis for distinction between the present case and that of *I. M. Dach Underwear Co. v. Employment Security Commission*, 347 Mich 465. The Referee and the Appeal Board both found that the agreement was not void under Section 31 of the Act. Their finding was correct in fact and in law, and there is no basis for reversing such finding.

On oral argument it was suggested that the Dach case should not be followed, and that the findings of the Referee and the Appeal Board allowing compensation should be affirmed, and that all arguments advanced on behalf of

claimants should be accepted because the "climate of opinion" on the Supreme Court of this State was such that a finding adverse to employees would probably be reversed. This Court does not agree that it should decide any case on the basis of its guess as to what the Supreme Court will do with it, but should decide all cases in accordance with the law as it presently stands.

Claimants' argument is aptly answered in the following quote from *Penfield Co. of Cal. v. Securities and Exchange Comm.*, 143 Fed. 2, 746:

> "We cannot agree that an inferior federal court may make its prognostication of the weather in the Supreme Court chambers, however well fortified in judicial reasoning, and forecast that the Supreme Court 'seems' about to overrule its prior decision, and outrun that Court to the overruling goal. It is not a fanciful conjecture that, if such a guessing contest were permitted the ingenuity of judges, stirred by varied philosophies of governmental and social regulations, would find rational arguments for overruling a score of Supreme Court decisions."

If Dach is to be overruled, it should be overruled by the same Court that gave it life. Until it is, it remains the law of the State and a bar to claimants' assertions of invalidity of Paragraph 118.

One further claim of the employer deserves comment. Section 29 (1) (b) (2) provides that one who is participating in or *financing* or directly interested in the labor dispute which caused the stoppage of work is directly involved and disqualified from receiving benefits. The section further provides that payment of *regular* union dues shall not be considered as financing a labor dispute.

It appears that in 1955 an extra assessment was made to each member of the Union of $5.00 and that this assessment was made and collected until a strike fund of a certain amount had been created, at which time the extra assessment was discontinued. It further appears that strike

benefits to Fisher-Mansfield employees were paid from this union fund. It appears to this Court that it does violence to the usual and ordinary meaning of words, and to the legislative intent of the statute to hold that payment of an extra assessment for the creation of a strike fund constitutes regular union dues. Rather it seems that this activity is exactly what the legislature must have had in mind in providing that a person who assisted in the financing of a labor dispute was directly involved and disqualified from benefits. Neither the Referee nor the Appeal Board made any finding regarding financial contribution as bearing upon the question of direct involvement. In the opinion of the Court they should have made such finding, and should have found direct involvement through financial contribution to the Mansfield strike through the Union strike fund.

For the reasons herein stated, the finding of the Referee and the Appeal Board are reversed and order will enter holding claimants are disqualified from receiving benefits under the Act.

May 6, 1963.

David Anderson, Jr.,
Acting Circuit Judge.

A true copy:

Laura Wahl,
Deputy County Clerk.

APPENDIX A-6

Order Reversing Decision of Appeal Board

(General Motors Corporation v.
M.E.S.C. Appeal Board, et al.)

(Filed May 8, 1963)

(In the Circuit Court for the County of Ingham)

At a general term of the Circuit Court for the County of Ingham, continued and held at the Circuit Court Rooms in the City of Lansing, in said county, on Wednesday, May 8, 1963.

Present: Hon. David Anderson, Jr., Circuit Judge.

Court opened for business in due form at nine-thirty o'clock A.M., with Court officer John F. Lechler in attendance.

This cause having been duly brought on for hearing in Connection with the Writ of Certiorari heretofore issued by this Court for a review of the Records and Proceedings, including the Decision of the Appeal Board of the Michigan Employment Security Commission dated April 3, 1961.

Briefs having been filed and arguments having been presented to the Court in this cause and the Court having fully considered the entire matter and having issued a written opinion in connection therewith;

Now, therefore, for the reasons expressed in such opinion, the Court does order and adjudge that the Decision of the Appeal Board of the Michigan Employment Security Commission be and the same is hereby reversed and an order will enter holding claimants are disqualified from receiving benefits under the Act.

Thereupon Court adjourned until Thursday morning at nine-thirty o'clock.

Read, approved and signed in open Court.

David Anderson, Jr.,
Circuit Judge.

(Jurat.)

APPENDIX A-7

(General Motors Corporation v.
M.E.S.C. Appeal Board, et al.)

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 4th day of October in the year of our Lord one thousand nine hundred and sixty-five.

Present the Honorable Thomas M. Kavanagh, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Theodore Souris, Otis M. Smith, Michael D. O'Hara, Paul L. Adams, Associate Justices.

On order of the Court, a motion to deny rehearing having been heretofore entered on October 4, 1965, by a four to two vote of the Court, a motion thereafter having been made by Justice Souris, supported by Justice Smith, that the Court grant sua sponte a rehearing in General Motors Corporation v. Appeal Board, 31 October 1964, decided July 13, 1965, and that said rehearing be on the original briefs and appendix and such supplements thereto as the parties may be advised to file, for oral argument during the December session of the Court; it is hereby ordered that the rehearing be granted as moved: Adopted October 4, 1965, Dethmers, Kelly and O'Hara, J.J., dissenting. Adams, J., not participating.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 6th day of October in the year of our Lord one thousand nine hundred and sixty-five.

(Seal)

Donald F. Winters,
Clerk.

APPENDIX A-8

(General Motors Corporation v.
M.E.S.C. Appeal Board, et al.)

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 8th day of June in the year of our Lord one thousand nine hundred and sixty-six.

Present the Honorable Thomas M. Kavanagh, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Theodore Souris, Otis M. Smith, Michael D. O'Hara, Paul L. Adams, Associate Justices.

This cause having been brought to this Court on appeal from the circuit court for the county of Ingham, and an opinion and order having heretofore been entered herein on July 13, 1965, and it appearing to the Court that a rehearing should be allowed, and the cause having been reargued by counsel, and resubmitted, it is now ordered that the order of the circuit court for the county of Ingham be and the same is hereby reversed and the cause is remanded for entry of an order upholding these claims as filed. It is further ordered that appellants recover their costs.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 29th day of June in the year of our Lord one thousand nine hundred and sixty-six.

Donald F. Winters,
Clerk.

(Seal)

APPENDIX A-9

(General Motors Corporation v.
M.E.S.C. Appeal Board, et al.)

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 19th day of July in the year of our Lord one thousand nine hundred and sixty-six.

Present the Honorable Thomas M. Kavanagh, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Theodore Souris, Otis M. Smith, Michael D. O'Hara, Paul L. Adams, Associate Justices.

In this cause an application for rehearing having heretofore been submitted herein, it is hereby DENIED. Adams, J., did not participate.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 19th day of July in the year of our Lord one thousand nine hundred and sixty-six.

(Seal)

Donald F. Winters,
Clerk.

APPENDIX A-10

GENERAL MOTORS CORPORATION v. EMPLOYMENT SECURITY COMMISSION.

Decision of the Court

1. Unemployment Compensation—National Contract—Extension of Strike from Supplier Plant to Supplied Plant of Same Employer.

Denial of unemployment compensation benefits to employees at plant in this State which was shut down because of lack of parts supplied by employer's struck plant in another State which was subject to national union contract extending the strike to plants forced to close by reason of such strike is affirmed (CLS 1961, §421.29).

Separate Opinion.

Dethmers and Kelly, JJ.

2. Unemployment Compensation—Waiver of Benefits—National Contract—Scope of Strike.

Provision of national union contract whereby an authorized strike in 1 bargaining unit which results in an interruption in flow of material or services to operations in any other bargaining unit of the same employer would be considered an authorized strike in the latter plant is not construed as a waiver of benefits, contrary to statute invalidating such waivers, where there is no express waiver of benefits and fair construction requires that an authorized strike in an out-of-State supplying plant constitutes a strike in the plant in this State, where claimants were employed, that had to close because of stoppage in the supplier (CL 1948, §421.31).

3. Same—Labor Dispute—Findings of Fact—Weight of Evidence.

Findings of fact by referee, adopted by the appeal board, that stoppage of work in 2 of the employer's plants located in this State was because of a labor dispute within the establishments in which claimants were employed and that agreement between employer and union which included a provision that an authorized strike in 1 plant resulting in interruption of flow of material or services to operations in any other bargaining unit would be considered an authorized strike in the latter held, not contrary to the great weight of the evidence, hence should not be disturbed (CLS 1961, §421.38).

4. ADMINISTRATIVE LAW—COURTS.

The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.

5. LABOR RELATIONS—STRIKES.

An authorized strike is not a creature of the law, but, rather, of the call and action of the union.

6. UNEMPLOYMENT COMPENSATION—EXTENSION OF STRIKE FROM SUPPLIER PLANT TO SUPPLIED PLANT OF SAME EMPLOYER—WAIVERS—DISQUALIFICATION FOR BENEFITS.

Stoppage of work in employer's plants in this State where claimants were employed, by reason of an authorized strike in the employer's supplying plant in another State was an extension of such strike to the plants in this State by reason of national contract which provided for such an extension, hence, the union's action of calling a strike was not a violation of provision of the employment security act barring waivers of rights to benefits under the act, the layoff in this State being due to an extension of the strike, disqualifying claimants from benefits (CL1948, §421.31; CLS 1961 §§421.29, 421.33).

SEPARATE OPINION.

O'HARA, J.

7. UNEMPLOYMENT COMPENSATION—WAIVER OF BENEFITS—COLLUSIVE OR COERCED AGREEMENT.

The waiver of an unemployment compensation benefit pursuant to a collusive or coerced agreement between the employer and employee would be void (CLS 1961, §421.31).

DISSENTING OPINION

T. M. KAVANAGH, C. J., and BLACK, J.

8. UNEMPLOYMENT COMPENSATION—WAIVER.

Employees cannot waive their right to unemployment compensation benefits (CL 1948, §421.31).

9. SAME—STATUTES—NATIONAL UNION CONTRACT—WAIVER.

Provision of national bargaining agreement between union and employer whereby an authorized strike in bargaining unit which results in an interruption of flow of material or services to operations in any other bargaining unit would be considered an authorized strike in any such affected bargaining unit did not effect a waiver of benefits to employees in Michigan plants of the employer who were idled by reason of strike in an employer's Ohio plant (CL 1948, §421.31).

10. SAME—STATE—STATUTES.

The State alone may allow or deny unemployment compensation benefits, and may do so only in accordance with the State law establishing and governing the same, especially with respect to waiver (CL 1948, §421.31).

11. SAME—WAIVER—EXTENSION OF STRIKE.

The broadly purposed social security act of 1935, pursuant to which State had enacted unemployment compensation law barring waiver of unemployment compensation benefits is consistent with the national labor relations act permitting collective bargaining and the ordering of industrial relations to minimize industrial strife, and pursuant to which a national agreement between labor union and employer had been made extending authorized strike to other plants of the employer forced to close by reason of lack of material or services from struck plant (CL 1948, §421.31).

REFERENCES FOR POINTS IN HEADNOTES

[1, 2, 6-9] 48 Am Jur, Social Security, Unemployment Insurance, and Retirement Funds §§34, 36.

Construction and application of provisions of unemployment compensation or social security acts regarding disqualification for benefits because of labor disputes or strikes. 28 ALR2d 287.

[3] 48 Am Jur, Social Security, Unemployment Insurance, and Retirement Funds §§36, 46, 49.

[5] 81 Am Jur, Labor §§369, 383.

[10] 48 Am Jur, Social Security, Unemployment Insurance, and Retirement Funds §§10, 11, 34.

[11] 48 Am Jur, Social Security, Unemployment Insurance, and Retirement Funds §§3, 5, 34.

Appeal from Ingham; Anderson, Jr. (David), Jr., presiding. Submitted October 9, 1964. (Calendar No. 31, Docket No. 50,411.) Decided July 13, 1965.

Robert H. Stinson and others filed claims for unemployment compensation against General Motors Corporation, a Delaware corporation, because of lay-offs necessitated by labor disputes and work stoppages in company's out-of-state operations. Hearing referee and appeal board granted compensation. On certiorari, circuit court denied compensation. Defendant Stinson appeals. Affirmed.

Aloysius F. Power (*K. Douglas Mann* and *Richard E. Helms,* of counsel), for plaintiff General Motors Corporation.

Zwerdling, Miller, Klimist & Maurer (*A. L. Zwerdling* and *Nino E. Green,* of counsel), for defendant Stinson and others.

Frank J. Kelley, Attorney General, *James R. Ramsey,* Acting Solicitor General, *George M. Bourgon* and *John J. Long,* Assistant Attorneys General, for the Michigan Employment Security Commission.

DETHMERS, J. This is an unemployment compensation case involving multiple claims, for weeks in September and October of 1957, of several employees, consolidated as permitted by CLS 1961, §421.33 (Stat Ann 1960 Rev §17.-535). The appeal here is by claimants from a circuit court order holding them disqualified from receiving benefits under the act (CL 1948, §421.1 *et seq.* [Stat Ann 1960 Rev §17.501 *et seq.*] as amended) and reversing the contrary decision of the appeal board of the Michigan employment security commission.

Claimants were employees of plaintiff General Motors Corporation, in its Fisher No. 1 and its Buick plants in Flint, Michigan. In the manufacturing operations of those 2 plants parts were necessary which were made in its Fisher Body plant in Mansfield, Ohio. A strike was called at the Mansfield plant, authorized by the international union of

which the employees in all 3 of the mentioned plants were members. This occasioned cessation of operations in the Mansfield, Ohio, plant, which resulted in a lack in the 2 Flint plants of parts manufactured in Mansfield which were necessary to the Flint manufacturing process, and this, in turn, caused the shutting down of the Flint plants and consequent unemployment of claimants. These facts gave rise to the question whether, as held by the circuit court, claimants were disqualified for benefits under section 29 (1)(b) of the act (CLS 1961, §421.29 [Stat Ann 1960 Rev §17.531]).

The facts in this case are substantially like those in *Park v. Employment Security Commission*, 355 Mich 103, and decision therein might be considered to govern decision here, except for the one distinguishing feature on the facts which afforded the basis of the circuit court's decision. That distinction is that here, as was not true in *Park*, the national contract in force between the union and the employer contained the following paragraph:

"The union has requested this national agreement in place of independent agreements for each bargaining unit covered thereby. Accordingly an authorized strike in one bargaining unit under this agreement which results in an interruption in the flow of material or services to operations in any other bargaining unit under this agreement, will be considered an authorized strike in any such affected bargaining unit."

In *Park* a majority of this Court decided that the employees in a Michigan plant, shut down for lack of parts regularly manufactured in and furnished to the Michigan plant by a struck Ohio plant, were not disqualified from receiving benefits under said section 29(1)(b) of the act, which provides for such disqualification in case of unemployment due to a stoppage of work existing because of a labor dispute in the *establishment* in which claimant is or was last employed. This decision was based on a holding that the struck Ohio plant and the resultantly closed Michi-

gan plant were not one or the same *establishment*, and, hence, the disqualification of that section did not apply. That would seem to cover the facts in the case at bar except for the mentioned provision of the union-management labor contract. Does it make the *Park* decision inapplicable?

Claimants here contend that the noted contract provision cannot be considered valid if given the interpretation and effect given it by the circuit court which, they say, applied the disqualifying provisions of said section 29 (1)(b) to the situation as if the 3 plants in question were part of one establishment. We do not think that a holding that the 3 plants, 1 in Ohio and 2 in Michigan, are part of 1 establishment is essential to the circuit court's decision that claimants were disqualified. Rather, the decision is to be supported on the proposition that the meaning of the contract provision is that, under the facts here obtaining, the union had authorized and called a strike not only in Mansfield, but, as well, in the Flint plants. If that is the effect of said contract provision, is it valid under the statute? Claimants say not, because of the provisions of section 31 of the act (CL 1948, §421.31 [Stat Ann 1960 Rev §17.533]) which reads, in part, as follows:

"No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act from an employer shall be valid. No agreements by an individual in the employ of any person or concern to pay all or any portion of the contributions of an employer, required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of any individual in his employ to finance the contributions of the employer required from him, or require or accept any waiver of any right hereunder by any individual in his employ."

The question, then, boils down to this, whether the quoted provision of the contract is violative of section 31 of the

act and, hence, invalid and inoperative. If so, claimants may receive compensation. If not, they are disqualified therefor.

The language of the contract does not express a waiver of benefits as prohibited in section 31 of the act. Fairly construed, it provides that when the union authorizes a strike in one of the employer's plants, causing an interruption of flow of materials to another one of its plants and of operations therein, with consequent layoff of union members who are employees in the latter, such layoff shall be considered as occasioned by an authorized strike in the latter, or, in short, that the union, under such circumstances, has authorized and extended the strike to the latter plant. It follows that, under section 29(1)(b) of the act, claimants stopped working in the Flint plants in the course of a labor dispute in the establishment, even as defined in *Park*, in which they were then employed.

The appeal board adopted as a part of its decision the findings of fact of the referee that (1) there was a stoppage of work because of a labor dispute within the establishments in which claimants were employed, and (2) that the union and the employer, in agreeing on the noted provision of the contract, did not enter into "a collusive agreement that unemployment benefits be waived". There were no proofs or showing contrary to those findings of fact. There was undisputed testimony that the labor dispute at the Ohio plant involved and included not only local issues there, but also demands for changes in the wages, hours or other conditions of employment of the employees of other plants of the employer, including those of the 2 Flint plants (claimants herein) under the national agreement between the union and the employer. Those findings of fact are not, therefore, contrary to the great weight of the evidence. We may not, then, disturb them. See section 38 of the act (CLS 1961,§421.38 [Stat Ann 1960 Rev §17.540]); also, *Miller v. F. W. Woolworth Company*, 359 Mich 342, and cases therein cited.

To the extent that it might be reasoned that the findings are conclusions and applications of law, and I do not agree with such reasoning, applicable is the following from *Mississippi Valley Barge Line Co. v. United States,* 292 US 282 (54 S Ct 692, 78 L ed 1260), quoted with approval in *Peadon v. Employment Security Commission,* 355 Mich 613, 629:

" 'The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.' "

On the record presented here there is a reasonable basis for the conclusion that there was a labor dispute in the establishments in which claimants were employed because the union, under the agreement, automatically called a strike in and extended the labor dispute thereto under the circumstances of this case, and, hence, the agreement was not a collusive agreement that unemployment benefits be waived. There were none to be waived because the strike existed, by agreement, in the plants in which they had been employed. After all, an authorized strike is not a creature of the law, but, rather, of the call and action of the union. Such action brings about the strike. It is no violation of section 31 of the statute for the union to call the strike, regardless of whether it is called independently of or in pursuance of the agreement which provided that the union was doing precisely that, under the circumstances of this case.

The order of the circuit court is affirmed.

KELLY, J., concurred with DETHMERS, J.

O'HARA, J. *(concurring).* I concur with Mr. Justice DETHMERS and record again my disagreement with the principle that waiver of benefits is here involved. The "waiver" contemplated by the statute, in my view, is a collusive or coerced result, not one arising from the reality of present-day arms' length collective bargaining between well-matched participants delineating the limits or extent of an "authorized strike."

BLACK, J. *(dissenting)*. The minority opinion of *Chrysler Corporation v. Smith*, 297 Mich 438, 135 ALR 900), later to become law (*Park v. Employment Security Commission*, 355 Mich 103), agreed with then Circuit Judge CARR (p 469):[1]

"It is our conclusion from the foregoing that the several plants of appellant Chrysler Corporation must be held to be separate establishments within the meaning of our statute, and in this determination we concur with the conclusion of the referee, the appeal board, and Judge CARR, who affirmed their decisions."

The essence of Judge CARR's *Chrysler Case* opinion appears on page 118 of *Park's* report. The conclusion finally reached by that eminent jurist was that "plaintiff's [Chrysler] different plants must be regarded as separate establishments insofar as the application of section 29, subd (d)[2] is concerned."[3] As in *Park* (140 and again at 151), I agree unreservedly with Judge CARR's view and application of said section 29(d), and therefore look upon *Park* as precedentially controlling of this appeal.

I gather from my Brother DETHMERS' opinion that he would agree with such controlling application of *Park* were it not for paragraph (118) of the national contract[4]

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[1] Judge CARR subsequently became an Associate and thereafter Chief Justice of this Court. See 312 Mich iii and 372 Mich iii.

[2] CLS 1961, §421.29(1)(d) (Stat Ann 1960 Rev. §17.531).—REPORTER.

[3] 59 (pt 2) Oct Term, 1940, Michigan Supreme Court Records and Briefs, p. 2400 (*Chrysler Corporation v. Smith*, 297 Mich 438 [135 ALR 900]).—REPORTER.

[4] "(118) The union has requested this national agreement in place of independent agreements for each bargaining unit covered thereby. Accordingly an authorized strike in one bargaining unit under this agreement which results in an interruption of the flow of material or services to operations in any other bargaining unit under this agreement, will be considered an authorized strike in any such affected bargaining unit."

which had been agreed upon between the plaintiff employer and the union representing GMC employees. Justice DETHMERS concludes, that provision considered, that it controls to exclusion of *Park's* rule. At this point our membership parts melodious company.

If appellants Stinson *et al.* were otherwise possessed of right to unemployment benefits as claimed, and they were as all directly or tacitly concede, they did not waive that right. They could not. The first paragraph of section 31 of the statute, in effect when the currently considered rights of appellants Stinson *et al.* accrued, read as follows (CL 1948, §421.31 [Stat Ann 1960 Rev §17.533]):

"Sec. 31. * * * No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act from an employer shall be valid. No agreements by an individual in the employ of any person or concern to pay all or any portion of the contributions of an employer, required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of any individual in his employ to finance the contributions of the employer required from him, or require or accept any waiver of any right hereunder by any individual in his employ."

As against this statutory provision paragraph (118) cannot prevail in bar of benefits as claimed. See *General Motors Corporation v. Mulquin,* 134 Conn 118 (55A 2d 732), where the same contractual stipulation (designated in that case as section 131) was tendered by General Motors, as against a statutory provision corresponding fully with section 31 above, in support of an affirmative answer to the second question considered by the court. Such second question was (p 124):

"2. Did the commissioners err in holding that section 131 of the agreement of April 16, 1945, between General Motors Corporation and the International is void as con-

trary to and prohibited by section 1346 e (a) of the 1939 cumulative supplement?'"[5]

The court concluded (p 133):

"As to the second [question], our answer is that if it was within the contemplation of the parties that section 131 of their agreement would prevent the award of unemployment benefits to the employees, the section is, to that extent at least, void and ineffective."

Since I find myself in agreement with the cited Connecticut case, it is due the circuit judge below to say that he reached judgment relying partly upon the majority opinion of *I. M. Dach Underwear Company v. Employment Security Commission*, 347 Mich 465, 479, 480.[6] *Dach*, however, never fully accepted here, has come to express overrulement. See *Michigan Employment Security Commission v. Vulcan Forging Co.*, 375 Mich 374.

The final question is stated appropriately by the attorney general:

"Does the supremacy clause of article 6 of the Federal Constitution validate a provision of a collective bargaining agreement which is illegal under a State unemployment compensation law?"

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[5] For current Connecticut provisions see Connecticut General Statutes Annotated, §31-272.—REPORTER.

[6] Judge Anderson said, in his opinion:

"It has been determined that an agreement, voluntarily entered into between employer and employee, covering a lawful subject of collective bargaining, is not an agreement to waive benefits even though the agreement may have a collateral effect on the employment status of the individual and result in disqualifying from benefits certain employees who otherwise would be entitled thereto. This court finds no rational basis for distinction between the present case and that of *I. M. Dach Underwear Co. v. Employment Security Commission*, 347 Mich. 465. The referee and the appeal board both found that the agreement was not void under section 31 of the act. Their finding was correct in fact and in law, and there is no basis for reversing such finding."

The attorney general, opposing plaintiff-appellee as regards such question, stands for a negative answer. He alleges a commonplace, that "the State alone may allow or deny unemployment compensation benefits, and may do so only in accordance with the State law establishing and governing the same", and proceeds to distinguish *Local 24 of I. B. of T. C., W. & H. v. Oliver,* 358 US 283 (79 S Ct 297, 3 L ed 2d 312) (the foremost authority cited by plaintiff-appellee to the point of overriding Federal supremacy[7]) on ground that the goal of Federal labor policy, as expressed in the National labor relations act[8] (see *Oliver* at 295, 296), is in no manner inconsistent with that uniform policy of the States which prohibits agreement "by an individual" to waive or commute payment of unemployment compensation in any instance where such compensation is otherwise lawfully payable to such individual.[9] With his reasoning I agree.

By the broadly purposed social security act of 1935,[10] Congress induced the States to enact their unemployment compensation laws. See footnote 2, *Unemployment Compensation Commission of Alaska v. Aragon,* 329 US 143, 145 (67 S Ct 245, 91 L ed 136). The policy of social security is as strong if not stronger than that of promotion—by congressional legislation—of collective bargaining and the ordering of industrial relations to minimize industrial strife. The two are consistent as well as socially beneficial. Both may be enforced, compatibly in today's context, by

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[7] US Const. Art 6, §2.—REPORTER.

[8] Stat 449 (1935) and 61 Stat 136 (1947), 29 USCA, §141 *et seq.*—REPORTER.

[9] All 50 of the States, and Puerto Rico, have included in their respective unemployment compensation laws nonwaiver provisions which either duplicate section 31 or are set forth in the same specific essence. This information appears in the Unemployment Insurance Reporter, Vols. 1B through 10, published by Commerce Clearing House.

[10] 49 Stat 620 (1935), 42 USCA §301.—REPORTER.

any State which, utilizing the specific likeness of said section 31, has prohibited agreements to waive unemployment benefits.

Since as applied here the Federal policies of social security, effected in part by State-enacted unemployment insurance, and of enforced collective bargaining to reduce industrial strife, are concordant rather than collisive, both stand without offense to the supremacy clause. The *Oliver Case*, as I read it, applies only when a State law, if given effect in a specific situation, "would wholly defeat the full realization of the congressional purpose." (*Oliver* at 295, 296). No such defeat of congressional purpose, by section 31's outlawing of the construction General Motors claims for paragraph (118), has been made to appear.[11]

No other question calls for discussion. The circuit court's judgment, entered upon certiorari to the appeal board, should be reversed with remand for entry of order upholding these claims as filed. Appellants should have costs of both courts.

T. M. KAVANAGH, C. J., concurred with BLACK, J.

SOURIS, SMITH, and ADAMS, JJ., did not sit.

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[11] This view of the *Oliver Case* finds support in the Supreme Court's most recent reference thereto. See this concluding passage, written in the corresponding tenor of *United Mine Workers of America v. Pennington*, — US — at — (85 S. Ct 1585, 1591; 14 L. ed 2d 626):

"But there are limits to what a union or an employer may offer or extract in the name of wages, and because they must bargain does not mean that the agreement reached may disregard other laws. *Teamsters Union v. Oliver*, 358 US 283, 296 (79 S Ct 297, 3 L ed 2d 347); *Brotherhood of Carpenters v. United States*, 330 US 395, 399—400 (67 S Ct 775, 91 L ed 973)."

APPENDIX A-11

GENERAL MOTORS CORPORATION v. EMPLOYMENT SECURITY COMMISSION

Decision of the Court.

1. Unemployment Compensation—National Contract—Extension of Strike from Supplier Plant to Supplied Plant of Same Employer.

Denial of unemployment compensation benefits to employees at plant in this State which was shut down because of lack of parts supplied by employer's struck plant in another State which was subject to national union contract extending the strike to plants forced to close by reason of such strike is reversed and grant of claims by appeal board of employment security commission upheld (CLS 1961, §421.29).

Separate Opinion.

T. M. Kavanagh, C. J. and Souris and Smith, JJ.

2. Unemployment Compensation—Work Stoppage in Another State.

Circuit court's denial of unemployment compensation benefits to employees at plant in this State which was shut down because of lack of parts supplied by employer's struck plant in another State is reversed on rehearing (CLS 1961, §421.29).

3. Same—Finding of Appeal Board—Evidence.

The Supreme Court may not set aside findings of fact of the appeal board of the employment security commission unless such fact findings are contrary to the great weight of the evidence (CLS 1961, §421.38).

4. Same—Finding of Appeal Board—Evidence.

Evidence that a strike in an out-of-State plant was called or prolonged to effectuate a contract covering conditions of employment of apprentices located in numerous plants of the employer, but not in plant where claimants for unemployment compensation were employed, is not sufficient to support a finding that a labor dispute existed in such plant, just because some of the production workers there might more easily qualify for apprentice training or even because the employer unilaterally might extend the contract's provisions to its nonunion apprentices in such local plant, so as to disqualify claimants from unemployment compensation (CLS 1961, §421.29).

5. SAME—WORDS AND PHRASES—LABOR DISPUTE.

The term labor dispute, *as used in employment security act, means no more than a controversy between employer and employees regarding hours, wages, conditions of employment or recognition of a bargaining representative (CLS 1961, §421.29 [1][b]).*

6. SAME—FINDING OF APPEAL BOARD—SUPPORTED BY RECORD.

Findings of fact by the appeal board of the employment security commission that the issues resulting in the labor dispute were local matters concerning working conditions in an out-of-State plant, and wages, hours, and working conditions of claimants in this State were not involved in the labor dispute held, *amply supported by the record (CLS 1961, §421.29).*

7. SAME—STATUTES—NATIONAL UNION CONTRACT—WAIVER.

Provision of national bargaining agreement between union and employer whereby an authorized strike in bargaining unit which results in an interruption of flow of material or services to operations in any other bargaining unit would be considered an authorized strike in any such affected bargaining unit did not effect a waiver of benefits to employees in Michigan plants of the employer who were idled by reason of strike in an employer's Ohio plant (CL 1948, §421.31).

DISSENTING OPINION

DETHMERS, KELLEY, and O'HARA, JJ.

8. UNEMPLOYMENT COMPENSATION—WAIVER OF BENEFITS—NATIONAL CONTRACT—SCOPE OF STRIKE.

Provision of national union contract whereby an authorized strike in 1 bargaining unit which results in an interruption in flow of material or services to operations in any other bargaining unit of the same employer would be considered an authorized strike in the latter plant is not construed as a waiver of benefits, contrary to statute invalidating such waivers, where there is no express waiver of benefits and fair construction requires that an authorized strike in an out-of-State supplying plant constitutes a strike in the plant in this State, where claimants were employed, that had to close because of stoppage in the supplier (CL 1948, §421.31).

9. SAME—LABOR DISPUTE—FINDINGS OF FACT—WEIGHT OF EVIDENCE.

Findings of fact by referee, adopted by the appeal board, that stoppage of work in 2 of the employer's plants located in this State was because of a labor dispute within the establishments

in which claimants were employed and that agreement between employer and union which included a provision that an authorized strike in 1 plant resulting in interruption of flow of material or services to operations in any other bargaining unit would be considered an authorized strike in the latter held, *not contrary to the great weight of the evidence, hence should not be disturbed (CLS 1961, §421.38).*

10. SAME—EXTENSION OF STRIKE FROM SUPPLIER PLANT TO SUPPLIED PLANT OF SAME EMPLOYER—WAIVERS—DISQUALIFICATION FOR BENEFITS.

Stoppage of work in employer's plants in this State where claimants were employed, by reason of an authorized strike in the employer's supplying plant in another State was an extension of such strike to the plants in this State by reason of national contract which provided for such an extension, hence, the union's action of calling a strike was not a violation of provision of the employment security act barring waivers of rights to benefits under the act, the layoff in this State being due to an extension of the strike, disqualifying claimants from benefits (CL 1948, §421.31; CLS 1961, §§421.29, 421.33).

11. JUDGES—REMOVAL OF DISQUALIFICATION—REHEARING.

Amendment of court rule by the Supreme Court removing disqualification of justices of the Supreme Court from participation in the decision of a case should not permit disturbance on rehearing of result arrived at on original hearing (GCR 1963, 405.3[2]).

REFERENCES FOR POINTS IN HEADNOTE.

[1, 2, 4-10] 48 Am Jur, Social Security, Unemployment Insurance, and Retirement Funds §36.

Construction and application of provisions of unemployment compensation or social security acts regarding disqualification for benefits because of labor disputes or strikes. 28 ALR2d 287.

What constitutes labor dispute, strike, or lockout, within disqualifying provisions of unemployment compensation act. 91 L ed 146.

[3] 2 Am Jur 2d, Administrative Law §747.

[11] 5 Am Jur 2d, Appeal and Error §978 *et seq.*
30A Am Jur, Judges §89 *et seq.*

Appeal from Ingham; Anderson, Jr. (David), J., presiding. Submitted October 9, 1964. Resubmitted December 8, 1965. (Calendar No. 20, Docket No. 50,411.) Decided June 8, 1966.

Robert H. Stinson and others filed claims for unemployment compensation against General Motors Corporation, a Delaware corporation, because of layoffs necessitated by labor disputes and work stoppages in company's out-of-state operations. Hearing referee and employment security appeal board granted compensation. On certiorari, circuit court denied compensation. Defendant Stinson appeals. Reversed, with remand for entry of order upholding grant of unemployment compensation benefits.

Aloysius F. Power (*K. Douglas Mann* and *Richard E. Helms*, of counsel), for plaintiff General Motors Corporation.

Stephen I. Schlossberg and *Zwerdling, Miller, Klimist & Maurer* (*A. L. Zwerdling*, of counsel), for defendant Stinson and others.

Frank J. Kelley, Attorney General, *Robert A. Derengoski*, Solicitor General, *George M. Bourgon* and *John J. Long*, Assistant Attorneys General, for the Employment Security Commission.

SOURIS, J. By a 3-2 decision, 3 Justices not participating, this Court affirmed the circuit judge's order reversing a decision of the employment security commission's appeal board which had granted unemployment compensation benefits to claimants, employees of the General Motors Corporation, 376 Mich 135. On its own motion the Court granted rehearing.[1]

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[1] In the interim between our earlier decision and the grant of reheearing, GCR 1963, 405.3(2) was amended, see 376 Mich — and 377 Mich —, thereby removing the bar which prevented two of the three nonparticipating Justices from participating in the first decision herein. [In advance sheets, 376 part 3, pp ix-x, 377 part 1, pp iv-v.—REPORTER.]

The essential facts and principal questions presented by the appeal are stated fully and accurately in the opinions of Justices DETHMERS and BLACK appearing at 376 Mich 135, 138, 143. It is my judgment that Justice BLACK was right in concluding that paragraph 118 of the collective bargaining agreement between General Motors and the claimants' union cannot be given the effect contended for it by General Motors without violation of section 31 of the employment security act (CL 1948, §421.31 [Stat Ann 1960 Rev §17.533]) and that, therefore, our decision in *Park v. Employment Security Commission* (1959), 355 Mich 103, requires reversal of the circuit court's judgment.

Since our grant of rehearing, General Motors has filed a supplemental brief in which it reargues a contention previously advanced but not considered in Justice BLACK's opinion. It is that claimants are disqualified from receiving unemployment compensation benefits not alone because of paragraph 118[2] but, as well, because claimants' unemployment resulted in fact from a work stoppage due to a labor dispute in the establishments, even as defined in *Park, supra,* in which they were last employed. The basis for this contention by the company is evidence that the Mansfield, Ohio, strike involved more than just local issues affecting wages, hours and working conditions of the Mansfield employees; it is the company's claim that the price exacted from it for labor peace in Mansfield was its execution of a supplement to its 1955 national agreement with the union to include provisions therein "relating to apprentice training, the ratio of apprentices to journeymen, the allocation of overtime between journeymen and ap-

[2] Paragraph 118 reads as follows:

"The union has requested this national agreement in place of independent agreements for each bargaining unit covered hereby. Accordingly an authorized strike in one bargaining unit under this agreement which results in an interruption of the flow of material or services to operations in any other bargaining unit under this agreement, will be considered an authorized strike in any such affected bargaining unit."—REPORTER.

prentices, and the eligibility of production employees for apprentice training".

The record discloses that following the 1955 national agreement, the union became the certified bargaining agent for apprentices at about 20 of the company's plants and that the supplementary agreement ultimately reached was designed to cover these apprentice employees. It also discloses that the apprentices at the Flint plants in which claimants worked were not represented by the union until over a year after termination of the Mansfield strike and execution of the supplementary agreement when the apprentices at the Fisher, but not the Buick, plant became members of the union. Nonetheless, the company argues that as a result of the supplementary agreement production employees at its Flint plants, including claimants, were accorded greater opportunities to become apprentices by a change made in the age limit for admitting employees into the apprentice training program. Furthermore, it is claimed that journeymen at the Flint plants also benefited from certain of the provisions of the supplementary agreement. And finally, it is claimed that pursuant to a long-standing and well-recognized policy of General Motors the benefits granted by the supplemental agreement to apprentices represented by the union were extended to those apprentices not represented by the union, including those in the Flint plants in which claimants worked.

From all of this the company argues that the Mansfield strike, although it may have started as a local labor dispute, eventually became a national labor dispute permeating every "establishment" of the company; that claimants' unemployment was due "to a stoppage of work existing because of a labor dispute in the establishment in which [they are or were] last employed"; and that, therefore, claimants were disqualified to receive benefits by the provisions of section 29(1)(b)[3] of the act even without reliance upon the provisions of paragraph 118 of the collective bargaining agreement.

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[3] CLS 1961, §421.29 (Stat Ann 1960 Rev §17.531).

The trouble with this argument is that we are not free to set aside findings of facts made by the appeal board unless such findings are contrary to the great weight of the evidence. Section 38 of the act;[4] *Miller v. F. W. Woolworth Company* (1960), 359 Mich 342, 352. In this case, of General Motors, the referee and the appeal board, by adoption of the referee's decision, found, contrary to the company's assertions, that:

"The issues resulting in the labor dispute at the Mansfield, Ohio, plant were local matters concerning working conditions involving the employees in such plant. It was not shown that the wages, hours or working conditions of the claimants herein were involved in such labor dispute. It was brought out that certain matters concerning apprentices were involved in the dispute at the Ohio plant, and that agreement reached in this respect covered approximately 20 different units of the employer, none of which, however, concerned apprentices at the Fisher Body and Buick Motor Division plants in Flint."

The record amply supports the findings quoted. Indeed, had the appeal board found, as a matter of fact, that a labor dispute existed in the Flint plants in which claimants were employed solely on the basis of the evidence submitted by the company and summarized above, we would have had to hold that such finding was contrary to the great weight of the evidence. Evidence that a strike in Ohio was called or prolonged to effectuate a contract covering conditions of employment of apprentices located in numerous plants of the employer, but not in its Flint plants, is not sufficient to support a finding that a labor dispute existed in the Flint plants just because some of the Flint production employees might thereby more easily qualify for apprentice training or even because the employer unilterally might extend the contract's provisions to its non-union apprentices in Flint. The term "labor dispute", as used in section 29(1)(b), cannot be read so broadly. It means no more than a controversy between

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[4] CLS 1961, §421.38 (Stat Ann 1960 Rev §17.540).

employer and employees regarding hours, wages, conditions of employment or recognition of a bargaining representative. See *Lillard v. Employment Security Commission* (1961), 364 Mich 401, 420.

Absent evidence compelling a finding that claimants' unemployment was due to a stoppage of work because of a labor dispute in the establishments in which they were last employed, subsections (1), (2), (3), and (4) of section 29(1)(b) are not pertinent to our decision. See *Park v. Employment Security Commission* (1959), 355 Mich 103, 131, 132.

The foregoing considered, I join now in Justice BLACK's opinion for reversal appearing at 376 Mich 135, 143, not alone for the reasons therein stated but, as well, for the further reason considered herein.

T. M. KAVANAGH, C. J., and SMITH, J., concurred with SOURIS, J.

BLACK, J., concurred in the result.

DETHMERS, J. *(dissenting)*. The circuit court's order in this case holding claimants disqualified from receiving the unemployment compensation benefits sought by them, was affirmed on this case's previous visit to this Court. Reasons for affirmance appear in the opinion of this writer as reported in 376 Mich 135.

Since then, nothing has happened to change the result except this Court's amendment, on October 4, 1965, of GCR 405.3(2) relating to disqualification of a judge for ownership of stock in a corporation party to a case, "thereby", as noted in a footnote in Mr. Justice SOURIS' opinion, "removing the bar which prevented two of the three nonparticipating Justices from participating in the first decision herein" and the immediate granting thereafter, on that same date, of this rehearing by action of what had thus become a majority vote of this Court. Accordingly, for the reasons stated in this writer's said opinion, affirmance again should be ordered on this rehearing.

KELLY and O'HARA, JJ., concurred with DETHMERS, J.

ADAMS, J., did not sit.

APPENDIX B-1

Michigan Employment Security Act

Declaration of policy.

Sec. 2. The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state. Social Security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state. (1936 Mich Pub Acts No. 1.)

Sec. 29. (1) An individual shall be disqualified for benefits:

(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be directly involved in a labor dispute unless is established:

(1) That, at the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with 1 or more other employees have voluntarily stopped working other than at the direction of his employing unit, or

(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, or

(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed." (1936 Mich Pub Acts No. 1, as amended by 1955 Mich Pub Acts No. 281.)

Sec. 31. Waiver of rights to benefits; limitation of fees.

No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act from an employer shall be valid. No agreements by an individual in the employ of any person or concern to pay all or any portion of the con-

tributions of an employer, required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of any individual in his employ to finance the contributions of the employer required from him, or require or accept any waiver of any right hereunder by any individual in his employ. (1936 Mich Pub Acts No. 1.)

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Section 39. Definitions

As used in this act, unless the context clearly requires otherwise, the terms defined in this act shall be construed to have the meaning as prescribed and set forth in the several definitions.

Sec. 40. Employing Unit

"Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to this amendatory act, had in its employ 1 or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work. (1936 Mich. Pub. Acts No. 1, as amended by 1955 Mich. Pub. Acts No. 281).

APPENDIX B-2

Labor Management Relations Act of 1947

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Sec. 9.(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

Sec. 201. That it is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the

settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and . . ..

APPENDIX B-3

Constitution of the United States

Article VI, Clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Article I, Section 8, Clause 3:

The Congress shall have power to regulate Commerce * * * among the several states. * * *

Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B-4

Unemployment Tax Act

Section 3304(a)(5)

(a) Requirements.—The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

• • • • • •

(5) compensation shall not be denied in any such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 658

GENERAL MOTORS CORPORATION,
a Delaware corporation
(BUICK MOTOR DIVISION and FISHER BODY DIVISION),
Appellant,

v.

APPEAL BOARD OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Appellees,
and
ROBERT H. STINSON, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

MOTION TO DISMISS OR AFFIRM

ABRAHAM L. ZWERDLING,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. .....

GENERAL MOTORS CORPORATION,
a Delaware corporation
(BUICK MOTOR DIVISION and FISHER BODY DIVISION),
Appellant,
v.
APPEAL BOARD OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Appellees,
and
ROBERT H. STINSON, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

MOTION TO DISMISS OR AFFIRM

Appellees Robert H. Stinson, et al., pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move to dismiss on the grounds that:

(1) a decision of the federal question was unnecessary to the determination of the cause by the higest state court in Michigan, and

(2) a substantial federal question is not presented.

OPINIONS BELOW

The questions appellant seeks to review are considered in the opinions of the Supreme Court of Michigan, reported at 378 Mich. 110, and 376 Mich. 135, of the official Michigan Reports, and at 142 N.W. 2d 686, and 135 N.W. 2d 921, reproduced in the Jurisdictional Statement, Appendix A-11 and A-10, respectively.

JURISDICTION

Appellant seeks to invoke the jurisdiction of this Court under 62 Stat. 929 (1948), 28 U.S.C., Sec. 1257(a). For the reasons set forth herein, the Appeal should be dismissed.

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Michigan Employment Security Act[1] are as follows:

Sec. 2. The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state.

[1] Act No. 1, PA 1936, ex sess, as amended (CL 1948 §421.1 *et seq.* [Stat Ann 1960 Rev §17.501 *et seq.*])

Social Security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state.

Sec. 29. (1) An individual shall be disqualified for benefits:

(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be directly involved in a labor dispute unless it is established:

(1) That, at the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with 1 or more other employees have voluntarily stopped working other than at the direction of his employing unit, or

(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which labor dispute was then in progress, or

(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs, he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed.

Sec. 31. No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act from an employer shall be valid. No agreements by an individual in the employ of any person or concern to pay all or any portion of the contributions of an employer, required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of any individual in his employ to finance the contributions of the employer required from him, or require or accept any waiver of any right hereunder by any individual in his employ.

Sec. 40. "Employing unit" means any individual or type of organization, including any partnership, associa-

tion, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to this amendatory act, had in its employ 1 or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

QUESTION PRESENTED

If any federal question has been properly raised and presented, the Jurisdictional Statement does not accurately state such question. We restate what appellees Robert H. Stinson, et al. believe to be the only possible federal question raised:

> May the State of Michigan allow unemployment benefits without disqualification to persons unemployed through no fault of their own when their involuntary unemployment at plants of the General Motors Corporation in Flint, Michigan, results from a strike in a Mansfield, Ohio, General Motors Corporation plant?

In addition, appellees Stinson, et al., by this Motion to Dismiss, raise the following issues:

(1) A decision of the federal question was unnecessary to the determination of the cause by the highest State Court in Michigan.

(2) A substantial federal question is not presented.

STATEMENT OF THE CASE

The Michigan Supreme Court set forth the facts as follows:

> "Claimants were employees of plaintiff, General Motors Corporation, in its Fisher No. 1 and its Buick Plants in Flint, Michigan. In the manufacturing operations of those 2 plants, parts were necessary which were made in its Fisher Body Plant in Mansfield, Ohio. A strike was called at the Mansfield plant, authorized by the International Union of which the employees in all 3 mentioned plants were members. This occasioned cessation of operations in the Mansfield, Ohio, plant, which resulted in a lack in the two Flint plants of parts manufactured in Mansfield which were necessary to the Flint manufacturing process, and this, in turn, caused the shutting down of the Flint plants and consequent unemployment of claimants." (376 Mich. 135, 138-139)

With reference to the subject matter of the dispute belabored by the appellant in its Jurisdictional Statement, the Court said:

> "In this case of General Motors, the Referee and the Appeal Board, by adoption of the Referee's decision, found, contrary to the company's assertions, that:

> 'The issues resulting in the labor dispute at the Mansfield, Ohio, plant were local matters concerning working conditions involving the employees in such plant. It was not shown that the wages, hours or working conditions of the claimants herein were involved in such labor dispute. It was brought out that certain matters concerning apprentices were involved in the dispute at the Ohio plant, and that agreement reached in this respect covered approximately 20 different units of the employer, none of which, however, concerned apprentices at the Fisher Body and Buick Motor Division plants in Flint.'
>
> "The record amply supports the findings quoted." (378 Mich. 110, 116-117)

The Court posed the issue as follows:

> "The facts in this case are substantially like those in *Park v. Employment Security Commission,* 355 Mich. 103, and decision therein might be considered to govern decision here, except for the one distinguishing feature . . ." (376 Mich. 135, 139)

The Court then quotes paragraph 118 [Exhibit 25 (405a)] of the contract between employer and union as follows:

> "The Union has requested this national agreement in place of independent agreements for each bargaining unit covered thereby. Accordingly, an authorized strike in one bargaining unit under this agreement which results in an interruption in the flow of material or services to operations in any other bargaining unit under this agreement, will be considered an authorized strike in any such affected bargaining unit." (376 Mich. 135, 139)

The Court then comments:

> "In *Park,* a majority of this Court decided that the employees in the Michigan plant, shut down for

> lack of parts regularly manufactured in and furnished to the Michigan plant by a struck Ohio plant, were not disqualified from receiving benefits under said Section 29(1)(b) of the Act, which provides for such disqualification in case of unemployment due to a stoppage of work existing because of a labor dispute in the *establishment* in which claimant is or was last employed. This decision was based on the holding that the struck Ohio plant and the resultantly closed Michigan plant were not one or the same *establishment*, and hence, the disqualification of that section did not apply. That would seem to cover the facts in the case at bar except for the mentioned provision for the union-management labor contract. Does it make the *Park* decision inapplicable?" (376 Mich. 135, 139-140)

The Court then refers to the contention of claimants that Section 31 of the Statute, barring waiver of benefit rights, makes this contract provision invalid under the Statute, commenting:

> "The question, then, boils down to this, whether the quoted provision of the contract is violative of Section 31 of the act, and, hence, invalid and inoperative. If so, claimants may receive compensation. If not, they are disqualified therefor". (141)

REASONS FOR GRANTING MOTION TO DISMISS OR AFFIRM

(1) A DECISION OF THE FEDERAL QUESTION WAS UNNECESSARY TO THE DETERMINATION OF THE CAUSE BY THE HIGHEST STATE COURT IN MICHIGAN.

(a) The decision of the highest State Court was based on non-federal grounds, adequate to support the judgment, independent of Federal issues:

The Michigan Supreme Court decision is set forth in the Opinion of Justice Souris, at 378 Mich. 110, which concludes:

> ". . . I join now in Justice Black's opinion for reversal appearing at 376 Mich. 135, 143, not alone for the reasons therein stated but, as well, for the further reason considered herein.
>
> "T.M. Kavanagh, C.J., and Smith, J., concurred with Souris, J.
>
> "Black, J., concurred in the result." (118)

"The determination of the cause" by the Opinion of the Court majority, written by Justice Souris, is as follows:

> "It is my judgment that Justice Black was right in concluding that paragraph 118 of the collective bargaining agreement between General Motors and the claimants' union cannot be given the effect contended for it by General Motors without violation of Section 31 of the Employment Security Act (CL 1948, §421.31 [Stat Ann 1960 Rev §17.533]) and that, therefore, our decision in *Park v. Employment Security Commission* (1959), 355 Mich. 103, requires reversal of the circuit court's judgment.

> "Since our grant of rehearing, General Motors has filed a supplemental brief in which it reargues the contention previously advanced but not considered in Justice Black's opinion. It is that claimants are disqualified from receiving unemployment compensation benefits not alone because of paragraph 118 but, as well, because claimants' unemployment resulted in fact from a work stoppage due to a labor dispute in the establishments, even as defined in *Park, supra,* in which they were last employed." (114-115)

The Court then discusses this second contention, and points out that the Appeal Board found to the contrary. It then comments:

> "The trouble with this argument is that we are not free to set aside findings of facts made by the appeal board unless such findings are contrary to the great weight of the evidence." (116)

It then cites the findings of fact of the Appeal Board, and concludes:

> 'The record amply supports the findings quoted. Indeed, had the appeal board found, as a matter of fact, that a labor dispute existed in the Flint plants in which claimants were employed solely on the basis of the evidence submitted by the company and summarized above, we would have had to hold that such finding was contrary to the great weight of the evidence." (117)

Justice Souris then concludes with the comment that he joins in Justice Black's opinion, previously described by Justice Souris as dealing with the interpretation to be given paragraph 118 of the agreement between General Motors Corporation and United Automobile Workers in view of Sec. 31 of the Michigan Act.

There is not one word of reference in the Souris Opinion to any federal question.

The Opinion of Justice Black at 376 Mich. 143, first cites the precedent of the previous Michigan case, *Park v. Employment Security Commission,* to the effect that the several plants of a multi-plant corporation "must be held to be separate establishments", and then rules adversely with respect to the contention of General Motors that paragraph 118 of its collective bargaining agreement governs the case. Justice Black adds:

> "The final question is stated appropriately by the attorney general:
>
> > 'Does the supremacy clause of article 6 of the Federal Constitution validate a provision of a collective bargaining agreement which is illegal under a State unemployment compensation law?' " (146)

Justice Black then agrees with the Attorney General that ". . . . the goal of Federal labor policy, as expressed in the National labor relations act, (see *Oliver* at 295, 296), is in no manner inconsistent with that uniform policy of the States which prohibits agreement 'by an individual' to waive or commute payment of unemployment compensation in any instance where such compensation is otherwise lawfully payable to such individual" (146).

In a footnote to this statement (footnote 9 at pp. 146-147) the Court says:

> "All 50 of the States, and Puerto Rico, have included in their respective compensation laws nonwaiver provisions which either duplicate section 31 or are set forth in the same specific essence. This information appears in Unemployment Insurance Reporter, Vols. 1B through 10, published by Commerce Clearing House."

The Court concludes:

> "Since as applied here the Federal policies of social security, effected in part by State-enacted unemployment insurance, and of enforced collective bargaining reduce industrial strife, are concordant rather than collisive, both stand without offense to the supremacy clause. The *Oliver Case,* as I read it, applies only when a State law, if given effect in a specific situation, 'would wholly defeat the full realization of the congressional purpose.' (*Oliver* at 295, 296) No such defeat of congressional purpose, by Section 31's outlawing of the construction General Motors claims for paragraph (118) has been made to appear." (147)

Footnote 11 of the Court to this statement reads as follows:

> "This view of the *Oliver Case* finds support in the Supreme Court's most recent reference thereto. See this concluding passage, written in the corresponding tenor of *United Mine Workers of America v. Pennington,* ... U.S. ... at ... (85 S. Ct. 1585, 1591; 14 L. ed. 2d 66):
>
> > 'But there are limits to what a union or an employer may offer or extract in the name of wages, and because they must bargain does not mean that the agreement reached may disregard other laws. *Teamsters Union v. Oliver,* 358 U.S. 283, 296 (79 S. Ct. 297, 3 L. ed. 2d 347); *Brotherhood of Carpenters v. United States,* 330 U.S. 395, 399-400 (67 S.Ct. 775, 91 L. ed. 973).'" (147-148)

(b) In such cases review is barred for want of jurisdiction.

A 1932 note at 62 Col. L. Rev. 822, emphasizes the narrow limits of jurisdiction, as follows:

> "Consequently, even if a federal question has been decided, Supreme Court review is barred if the State Court's disposition was also based on a non-federal ground, that is, in the Court's view, independent of federal issues before the Court and adequate in itself to support the judgment." (822)

This statement cites *Fox Film Corporation v. A.B. Muller,* 296 U.S. 207 (1935), and *Enterprise Irrigation District, et al. v. Farmers Mutual Canal Company,* 243 U.S. 157 (1917).

Fox Film Corporation held:

> "The non-federal question in respect of the construction of the contracts and the federal question in respect of their validity under the Anti-trust Act, were clearly independent of one another. See *Allen v. Southern P. R. Co.,* 173 U.S. 479, 489-492, 43 L. ed. 775, 778-779, 19 S. Ct. 518. The case, in effect, was disposed of before the federal question said to be involved was reached. *Chouteau v. Gibson,* 111 U.S. 200, 28 L. ed. 400, 4 S. Ct. 340; *Chapman v. Goodnow (Chapman v. Crane),* 123 U.S. 540, 548, 31 L. ed. 235, 238, 8 S.Ct. 211. A decision of that question then became unnecessary; and whether it was decided or not, our want of jurisdiction is clear." (211)

Fox Film Corporation distinguished this case from "*Enterprise Irrigation District v. Farmers Mutual Canal Co., supra,* and other cases, to the effect that our jurisdiction attaches where the non-federal ground is so inter-

woven with the other as not to be an independent matter . . ." (210-211)

Enterprise Irrigation District, which also denied jurisdiction for review, said:

> "But, where the non-Federal ground has fair support, we are not at liberty to inquire whether it is right or wrong, but must accept it, as we do other state decisions of non-Federal questions." *Murdock v. Memphis,* 20 Wall. 590, 635, 22 L. ed. 429, 444; *Eustis v. Bolles,* 150 U.S. 369, 37 L. ed. 1111, 14 S. Ct. 131; *Leathe v. Thomas,* 207 U.S. 93, 99, 52 L. ed. 118, 120, 28 S. Ct. 30; *Arkansas Southern R. Co. v. German Nat. Bank,* 207 U.S. 270, 275, 52 L. ed. 201, 203, 28 S. Ct. 78. (164)

In the latest case dealing with this subject; *Department of Mental Hygiene of California v. Kirchner,* 380 U.S. 194 (1965), in which the Court decided to remand for further clarifying proceedings in the California Supreme Court: ". . . in view of the importance and widespread interest in the case" (201), the Court again underlined the test for jurisdiction as follows:

> ". . . we are unable to say with any degree of certainty that the judgment of the California Supreme Court was not based on an adequate and independent non-federal ground. This Court is always wary of assuminng jurisdiction of a case from a State Court unless it is plain that a federal question is necessarily presented, and the party seeking review here must show that we have jurisdiction of the case." (196-197)

The Court concluded:

> "On the basis of the foregoing, it is clear that we cannot say with the requisite certainty that the California judgment rested *solely* on the Fourteenth

> Amendment, or, amounting to the same thing, that in striking the statute down under the State Constitution the court below acted under what it conceived to be the compulsion of the Federal Constitution to be the compulsion of the Federal Constitution (*Jankovich v. Indiana Toll Road Comm.*, 379 U.S. 487, 492; 13 L. ed. 2d 439, 443, 85 S. Ct. 493); one or the other determination would be necessary to our exercising jurisdiction." (200)

Matter of William S. George v. Catherwood and General Motors Corporation, 14 N.Y. 2d 234, 250 N.Y.S. (2d) 421, 199 N.E. 2d 503, and *General Motors Corporation v. Mulquin*, 134 Conn. 118, 55 A. 2d 732, are both decisions of the highest State Courts involving interpretation of the same paragraphs of the General Motors-United Automobile Workers Agreement and their application to identical waiver provisions in the unemployment compensation laws of those States. In both cases General Motors made the same arguments in a fruitless effort to disqualify claimants for benefits in a similar labor dispute situation to the instant cause. *George, supra,* additionally contained specific consideration and rejection of constitutional arguments by Appellant (Respondent in *George*) at 250 NYS 2d 421, 427. The jurisdiction of this Court was not invoked in either case.

In the instant case, the judgment of the highest State Court rested on the following, adequate, non-federal bases: (1) employees in the Michigan plants who claim benefits here, laid off due to a strike in an Ohio plant, were not disqualified for unemployment compensation under the Michigan Statute because the struck plant and their plants were not one and the same establishment; and (2) the language of the contract between two private parties, urged by

one of them as rendering the waiver provision of the State law inoperative, was invalid insofar as this objective was concerned.

The discussion of the independent Federal question of the Supremacy Clause of Article 6 of the Federal Constitution was unnecessary to a determination of the cause.

An express ground for this Court acting favorably on this Motion to Dismiss, is ". . . that the Judgment rests on an adequate non-federal basis" (Rule 16, 1(b)).

(2) A SUBSTANTIAL FEDERAL QUESTION IS NOT PRESENTED.

(a) The Supremacy Clause.

Appellant contends that the Supremacy Clause of the United States Constitution renders Section 31 of the Michigan Employment Security Act, which bars waiver of unemployment compensation benefits, invalid as repugnant to and in conflict with the collective bargaining agreement between appellant General Motors Corporation and United Automobile Workers, the Union representing the employees in question.

Appellant's argument proceeds as follows:

Major premise: Collective bargaining agreements on mandatory bargaining subjects have the force of Federal law, and override inconsistent State laws.

Minor premise: Paragraph 118 is the *quid pro quo* for "a limited no-strike clause (Paragraph 117) which permitted the Mansfield strike" (Jurisdictional Statement, p.

6), the latter paragraph (117) being a "mandatory" subject of bargaining.[2]

Deduction: Section 31 of the Michigan Employment Security Act barring waiver of benefits must yield to Paragraph 118 of the private collective bargaining agreement between Appellant employer and the Union.

There are serious flaws in this fallacious syllogism. The truth of the matter is that neither General Motors nor the United Automobile Workers wanted to permit an outside third party, "the Umpire", to decide certain issues, namely, production standards. Therefore, they mutually agreed to

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[2] "(117) During the life of this Agreement, the Union will not cause or permit its members to cause, nor will any member of the Union take part in any sit-down, stay-in or slow-down, in any plant of the Corporation, or any curtailment of work or restriction of production or interference with production of the Corporation. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Corporation's operations or picket any of the Corporation's plants or premises until all the bargaining procedure as outlined in this Agreement has been exhausted, and in no case on which the Umpire shall have ruled, and in no other case on which the Umpire is not empowered to rule until after negotiations have continued for at least five days at the third step of the Grievance Procedure and not even then unless authorized by the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, and written notice of such intention to authorize has been delivered to the Personnel Staff of the Corporation at least five (5) days prior to such authorization. The Union will not cause or permit its members to cause nor will any member of the Union take part in any strike or stoppage of any of the Corporation's operations or picket any of the Corporation's plants or premises because of any dispute or issue arising out of or based upon the provisions of the Pension Plan, Insurance Program, or *Supplemental Unemployment Benefit Plan;* nor will the Union authorize such a strike, stoppage, or picketing. In case a strike or stoppage of production shall occur, the Corporation has the option of cancelling the the Agreement at any time between the tenth day after the strike occurs and the day of its settlement. The Corporation reserves the right to discipline any employe taking part in any violation of this Section of this Agreement." [Exhibit 25, (405a)]

permit the right to strike during the life of the contract on this issue. The *"quid pro quo"* was simply the fact that General Motors had no desire to leave the decision on this subject in the hands of the Umpire, preferring to have it settled by economic strength.

Thus, paragraph *117, supra,* the limited no-strike clause, contained its own consideration. It was a mutual agreement of the parties to permit strikes to occur after exhaustion of the grievance procedure in disputes they were unwilling to have arbitrated. As to paragraph *118,* if it was specific consideration for anything it was by its own terms an exchange for *the scope* of the National Agreement—a *permissive,* and *not a mandatory,* subject of collective bargaining.[3]

Further, assuming *arguendo* that a no-strike clause is a "mandatory" subject for collective bargaining, the *quid pro quo* for such a clause is nowhere defined nor made mandatory under Federal law. For example: If the *quid pro quo* contained in paragraph 118 were an agreement that employees who strike in violation of the no-strike clause were to be executed by the employer, no one would argue that such execution was exempt from punishment as an unlawful homicide under the police power vested in the State. Such exercise of the police power of the State would not act in contravention of any Federal law or policy. Likewise, the prohibition against waiver of unemployment compensation benefits contained in Section 31 of the Michigan Statute contravenes no Federal law or policy.

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[3] *NLRB v. International Brotherhood of Electrical Workers,* 266 F. 2d 349, 5th Cir. 1959, cf *Labor Board v. Borg Warner Corp.,* 356 U.S. 342 (1958). See also *Lebus v. Local 1800 ILA* ... F. Supp. ... (US D.C. Ed. La.) 52 LRRM 2501.

As was said by Justice Black of the Michigan Supreme Court below, speaking for the Court:

> "By the broadly purposed social security act of 1935, Congress induced the States to enact their unemployment compensation laws. See footnote 2, *Unemployment Compensation Commission of Alaska v. Aragon,* 329 U.S. 143, 145, (67 S. Ct. 245, 91 L. ed. 136). The policy of social security is as strong, if not stronger than that of promotion—by congressional legislation—of collective bargaining and the ordering of industrial relations to minimize industrial strife. The two are consistent as well as socially beneficial. Both may be enforced, compatibly in today's context, by any State which, utilizing the specific likeness of said section 31, has prohibited agreements to waive unemployment benefits." 376 Mich. 135, 147.

Thus, the Michigan Court reminds us that even such gigantic private entities as General Motors Corporation and United Automobile Workers cannot by private agreement vitiate the public policy of protecting victims of unemployment from waiver of their benefit rights. Moreover, it should be noted that the construction urged by General Motors is advanced for self-serving purposes here, by only one of the two parties to the Agreement.

Appellant stated below that Paragraph 118 was designed to relate to liability for damages in the event of strikes, and to the question of eligibility for contractual benefits in the form of holiday pay, as well as attempted waiver of unemployment compensation benefits (Joint Appendix on Appeal before Michigan Supreme Court: 469(a)). The first two objectives may be valid. The third, waiver of benefits, is not.

Carmichael v. Southern Coal and Coke Co., 301 U.S. 495 (1937), held that the federal and state unemployment

tax acts embodied a co-operative legislative effort for the accomplishment of a common purpose which neither government could achieve by itself. At page 526, in answer to the claim that the states had surrendered sovereignty to the federal government in the area of unemployment compensation, this Court said:

> "As the state legislation is not the product of a prohibited coercion, there is little else to which appellees can point as indicating a surrender of state sovereignty. As the opinion of the *Chas. C. Steward Co.* case points out, full liberty of action is secured to the state by both statutes. The unemployment compensation fund is administered in accordance with state law by the state commission. The statute may be repealed at the will of the legislature, and in that case the state will be free to withdraw at any time its unexpended share of the Unemployment Trust Fund from the treasury of the United States, and to use it for any public purpose. And, for the reasons stated in the opinion in the *Chas. C. Steward Machine Co.* case, we conclude that the deposit by the state of its compensation fund in the Unemployment Trust Fund involves no more of a surrender of sovereignty than does the choice of any other depository for state funds. The power to contract and the power to select appropriate agencies and instrumentalities for the execution of state policy are attributes of state sovereignty. They are not lost by their exercise."

In spite of this clearly delineated public purpose common to both the national and state governments, the employer would have us strike down the waiver provision of Section 31 of the Act on the theory that a contract provision pursuant to a federal enactment foreign to the joint federal-state unemployment compensation program mandates this anomaly.

Nor is it at all clear that the language of the "no-strike" provision here in question involves a mandatory subject of bargaining under Federal law.

In *NLRB v. Davison,* 318 F. 2d 550 (4th Cir. 1963) the Court enforced the decision of the National Labor Relations Board that an employer had refused to bargain in good faith by insisting on a contract clause indemnifying him from interference by a third party. Chief Judge Sobeloff said:

> "It is obvious that most matters that might be discussed or proposed in collective bargaining are likely to bear some relation, even if tenuous, to 'wages, hours, and other terms and conditions of employment.' But it would not necessarily follow that the indemnity proposal, insisted upon to impasse, is itself a mandatory subject of bargaining. Not all proposals that somehow respond to a problem that is customarily bargained about may themselves be insisted upon to impasse. Some proposals in response to the problem of strikes are mandatory subjects of bargaining. In *Borg-Warner,* however, the Supreme Court held that the 'ballot' clause was not. Some proposals to reduce disruptions resulting from breaches of contract are mandatory subjects of collective bargaining, e.g., arbitration agreements. Yet, as we have seen, it had been consistently held that performance bonds are not mandatory subjects. *It is the particular proposal, not merely the problem to which it is addressed, that must concern 'wages, hours, and other terms and conditions of employment.'"* (557) (Emphasis supplied)

International Brotherhood of Teamsters v. Oliver, 358 U.S. 283 (1959), cited by Appellant, is a case in which the United States Supreme Court determined that the collective bargaining agreement in question was in truth

concerned with wages, and not with price fixing. On this basis the Court then held that the attempted application of Ohio's Anti-Trust Statute was improper. There the Court was dealing with an actual fact situation in which the facts involved the fixing of rates and the issue was whether this amounted to price fixing, as opposed to collective bargaining on wages. In contrast, paragraph 118 of the collective bargaining agreement here in question attempts to create a *fiction* that an authorized strike is *deemed* to exist in one plant of the corporation where *in fact* there is no strike and the employees are laid off due to lack of work, in the event that the plant in question suffers an interruption in the flow of materials or services as the result of a strike in another plant of the corporation. Courts look behind such attempts and reach the actual facts. See *In Re Morton,* 284 N.Y. 167, 30 N.E. 2d 369; *Knowles v. Roberts,* — Ohio App. —, 117 N.E. 2d 173; *International Union v. Wisconsin Board,* 336 U.S. 245.

The "Declaration of Policy" in the Michigan Employment Security Act, Section 2, set forth in Appendix B-1 of the Jurisdictional Statement, reads:

> "The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows:
>
> Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature . . . for the public good and the general welfare of the people of this state."

This is the very type of enactment concerning which the Court drew a distinction when it said in *International Brotherhood of Teamsters v. Oliver,* 358 U.S. 283 (1959):

> "We have not here a case of a collective bargaining agreement in conflict with a local health or safety regulation; the conflict here is between the federally sanctioned agreement and state policy which seeks specifically to adjust relationships in the world of commerce." (297)

Thus the Court makes it clear that it does not contemplate overriding State Law of the type involved here.

As was said in *Southern Pacific Co. v. Arizona,* 325 U.S. 761:

> "Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested, *Reid v. Colorado,* 187 U.S. 137, 148; *Missouri Pacific R. Co. v. Larabee Flour Mills Co.,* 211 U.S. 612, 621, *et seq.; Missouri, K. & T.R. Co. v. Harris,* 234 U.S. 412, 418-419; *H.P. Welch Co. v. New Hampshire,* 306 U.S. 79, 85; *Allen-Bradley Local v. Board,* 315 U.S. 740, 749, or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy. *Sinnot v. Davenport,* 22 How. 227, 243; *Missouri, K. & T.R. Co. v. Haber,* 169 U.S. 613, 623; *Savage v. Jones,* 225 U.S. 501, 533; *Carey v. South Dakota,* 250 U.S. 118, 122; *Atchinson, T. & S.F.R. Co. v. Railroad Comm'n,* 283 U.S. 380, 391; *Townsend v. Yeomans,* 301 U.S. 441, 454." (at 766).

California v. Taylor, 353 U.S. 553 (1957), cited in support of its position by Appellant, simply dealt with the question of whether a State could legislate on the same subject matter upon which Congress had acted. The Court held that the Railway Labor Act, rather than a State Civil

Service Statute, was appropriate law governing wage agreements of interstate railways and railway employees. This in no way stands as authority for the proposition that Federal law concerning collective bargaining rights is the law governing circumstances under which the State may pay unemployment compensation benefits to laid off workers.

There is no basis for invoking the Supremacy Clause in this case.

(b) Due Process, Equal Protection, and the Commerce Clause.

In the twenty-eight years since benefit payments began under the Michigan Employment Security Act, there have been two previous occasions on which attempts have been made, without success, to invoke the jurisdiction of our highest Court over a decision of the Michigan Supreme Court interpreting the labor dispute disqualification provision of the Michigan Statute.

In *Lawrence Baking Company v. UCC,* Petition for Writ of Certiorari was denied October 9, 1944, 323 U.S. 738. This was a case in which:

> ". . . striking employees filed claims with defendant commission for unemployment compensation benefits . . ." (308 Mich. 198, 203, 13 N.W. 2d 260, 154 ALR 660) (1944).

The highest Court in Michigan allowed payment of benefits on the ground that the striking employees had been replaced and that there was no "stoppage of work" in the establishment concerned, within the meaning of the Statute. Employer's attack raised the issues of "due

process and equal protection of law", which issues were discussed and rejected by the Michigan Supreme Court, as follows:

> "Plaintiff further contends that the circuit court's construction of the 1941 amendment, which construction we have hereinbefore affirmed, renders said amendment unconstitutional as denying plaintiff employer due process and equal protection of law." (211) (Here the Reporter cites the 14th Amendment of the U.S. Constitution and Article II, Sec. 16 of the Michigan Constitution.)

After rejecting this argument, the Court further cites the contention of the employer that ". . . the payment of unemployment benefits to employees on strike, without a judicial determination of the merits of the labor controversy, constitutes an arbitrary intervention by the State in aid of one party to the controversy." (213) The Court rejects this contention as well.

Ford Motor Company v. Alexander Park, 360 U.S. 251 (1959), is a *per curiam* opinion which reads:

> "The Motion to Dismiss is granted and the appeal is dismissed for want of a substantial federal question."

This dealt with the second of the two Michigan cases involving labor disputes and unemployment compensation in which an effort was made to invoke jurisdiction.

There, as here, claimants for unemployment compensation benefits were unemployed due to layoffs at their plants because of a strike in another plant of the same corporation (Ford Motor Company) by their labor organization, the United Automobile Workers. The "Jurisdictional Statement" to the October Term, 1958, of the Supreme Court of the United States, under the heading "The Ques-

tions are Substantial", listed and discussed the following sub-headings:

"The Equal Protection Clause."
"The Commerce Clause."
"Related Federal Statutes."
"Far Reaching National Importance of Questions Presented."

In the instant case Appellant attempts to invoke the challenge of invalidity under the "equal protection", "due process" and "commerce" clauses by general reference to what it describes as "a discriminatory burden on interstate employers". (Jurisdictional Statement, p. 35) It does so on the false premise that payment or denial of unemployment benefits was dependent "on whether such dispute originated and was negotiated in a plant of the employer located outside or inside of the State of Michigan". (Jurisdictional Statement, p. V)

The decision of the Michigan Supreme Court contains no such ruling. It simply held that each plant of the "employing unit" in question (Sec. 40) was a separate "establishment" within the meaning of Sec. 29(1)(b) of the Statute and in accordance with the ruling in *Park, supra,* without reference to State lines, and that claimants in the Flint plants were not "directly involved in the labor dispute (in Mansfield, Ohio) which caused the stoppage of work" (in Flint, Michigan) within the meaning of Sec. 29(1)(b)(2) thereof.

Such classification on the basis of the definition of "establishment" and the determination of direct involvement "is neither arbitrary nor capricious, and rests upon some reasonable consideration of difference or policy", *Allied Stores of Ohio, Inc. v. Bowers* (1958), 358 U.S. 522, 527.

The Michigan Legislature could, without encountering constitutional difficulty, provide for payment of unemployment benefits to strikers by amendment of the statutory provisions here in question. Strikers were in fact paid in *Lawrence Baking Co., supra,* wherein certiorari was denied.

Surely classification for payment or non-payment on the basis of physical location and degree of involvement, under the present language, is well within the ambit of reasonableness.

CONCLUSION

It is respectfully submitted that this Court does not have jurisdiction of these appeals and, therefore, should grant this Motion to Dismiss or Affirm.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1966
No. 658

Supreme Court, U.S.
FILED
NOV 8 1966
JOHN F. DAVIS, CLERK

GENERAL MOTORS CORPORATION,
A Delaware corporation
(BUICK MOTOR DIVISION and FISHER BODY DIVISION),

Appellant,

v.

APPEAL BOARD OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION,

and

Appellees,

ROBERT H. STINSON, et al.,

Appellees.

On Appeal from the Supreme Court of the State of Michigan

MOTION TO DISMISS OR AFFIRM

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1966

No. ———

GENERAL MOTORS CORPORATION,
A Delaware corporation

(BUICK MOTOR DIVISION and FISHER BODY DIVISION),

Appellant,

v.

APPEAL BOARD OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION,

and

ROBERT H. STINSON, et al.,

Appellees.

On Appeal from the Supreme Court of the State of Michigan

MOTION TO DISMISS OR AFFIRM

Appellee—Michigan employment security commission, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the above entitled case be dismissed or affirmed on the grounds (1) that no substantial federal question is raised, and (2) that the decision of the supreme court of Michigan rests on an adequate non-federal basis.

OPINIONS BELOW

The questions appellant seeks to review were considered in the opinions of the supreme court of Michigan in 376 Mich 135, 135 NW 2d 921 (July 13, 1965), and 378 Mich 110, 142 NW 2d 686 (June 8, 1966), reproduced in the Jurisdictional Statement, Appendix A-10 (pp 46-58) and Appendix A-11 (pp 59-66), respectively.

JURISDICTION

Appellant seeks to invoke the jurisdiction of this Court under 62 Stat 929 (1948), 28 USC §1257 (2) and §2102 (c).

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Michigan employment security act[1] are follows:

> Sec. 2. The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state. Social Security requires protection against this hazard of our

[1] Act No. 1, PA 1936, ex sess, as amended (CL 1948 §421.1 *et seq.* [Stat Ann 1960 Rev §17.501 *et seq.*])

economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state.

Sec. 29. (1) An individual shall be disqualified for benefits:

(b) For any week with respect to which his total or partial unemployment is due to a stoppage of work existing because of a labor dispute in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be directly involved in a labor dispute unless it is established:

(1) That, at the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with 1 or more other employees have voluntarily stopped working other than at the direction of his employing unit, or

(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection, or

(3) That at any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the direction of his employing unit, in sympathy with employees in some other establishment or department in which a labor dispute was then in progress, or

(4) That at any time, there being no labor dispute in the particular department or unit in which he was then employed, or there being no labor dispute among the grade or class of workers within the employing unit to which he belongs, he shall have become unemployed because of a stoppage of work in his particular department or unit, or among the grade or class of workers to which he belongs, which stoppage of work is due to a labor dispute which was or is in progress in some other department or unit or among a different grade or class of workers of the same employing unit by whom he was then employed.

Sec. 31. No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this act from an employer shall be valid. No agreements by an individual in the employ of any person or concern to pay all or any portion of the contributions of an employer, required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of any individual in his employ to finance the contributions of the employer required from him, or require or accept any waiver of any right hereunder by any individual in his employ. * * * * *

Sec. 40. "Employing unit" means any individual or type of organization, including any partnership, association,

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trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to this amendatory act, had in its employ 1 or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

QUESTION PRESENTED

The appellee Michigan employment security commission, hereinafter referred to as the appellee-commission, restates what it believes to be the only possible federal question raised:

> May the State of Michigan allow unemployment benefits without disqualification to persons unemployed through no fault of their own when their involuntary unemployment at plants of the General Motors Corporation in Flint, Michigan results from a strike in a Mansfield, Ohio General Motors Corporation plant?

In addition, appellee-commission, by its Motion to Dismiss or Affirm, raises the following issues:

(1) The Jurisdictional Statement does not present a substantial federal question;

(2) The judgment of the supreme court of Michigan rests on an adequate non-federal basis.

STATEMENT OF THE CASE

The appellee-commission accepts the "Statement of the Case" as presented by the appellant in its Jurisdictional Statement.

The individual appellees herein, including Robert H. Stinson, numbering 4,798, shall hereinafter be referred to as claimant-appellees.

REASONS FOR GRANTING MOTION TO DISMISS OR AFFIRM

(1) A Substantial Federal Question Is Not Presented:

Succinctly stated, appellant argues that there are substantial federal questions involved (1) because the supreme court of Michigan in construing the disqualification for unemployment benefits imposable under section 29 (1) (b) of the Michigan employment security act refused to accept as binding a provision of the National Agreement[2] between

[2] The pertinent paragraph of this Agreement reads, as follows: "The Union has requested this National Agreement in place of independent agreements for each bargaining unit covered hereby. Accordingly an authorized strike in one bargaining unit under this Agreement which results in an interruption of the flow of material or services to operations in any other bargaining unit under this Agreement, will be considered an authorized strike in any such affected bargaining unit." Jurisdictional Statement, p 6.

the claimant-appellees' union and the appellant which provided that an authorized strike in one bargaining unit under said Agreement which results in the interruption of the flow of material and services to operations in any other bargaining unit under said Agreement would be considered an authorized strike in any such affected bargaining unit, and (2) because the supreme court of Michigan considered this provision of the National Agreement an illegal waiver of unemployment benefits under section 31 of the Michigan employment security act. The appellant contends that these holdings of the supreme court of Michigan result in interpretations of the Michigan employment security act which offend the "supremacy,"[3] "equal protection,"[4] "commerce"[5] and "due process"[6] clauses of the Federal Constitution, and, further, that the employment security law of Michigan, as interpreted by its supreme court, runs counter to the preemptive provisions and policies of the Federal Labor Management Relations Act of 1947.[7]

Appellee-commission denies that any of the aforesaid alleged claims present a substantial federal question.

(a) *The Supremacy Clause:*

The cases of *California* v. *Taylor*, 353 US 553, 77 S Ct 1037, 1 L ed 2d 1034 and *Teamsters Union* v. *Oliver*, 358 US 283, 79 S Ct 297, 3 L ed 2d 312, are cited by the appellant

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[3] Article VI, clause 2, U.S. Constitution.

[4] Article XIV, section 1, U.S. Constitution.

[5] Article I, section 8, clause 3, U.S. Constitution.

[6] Article XIV, section 1, U.S. Constitution.

[7] 29 USC (1958 ed) §141. *et seq.*

in support of its contention that the right to contract under the Federal Labor Management Relations Act, as amended in 1947, is unlimited and that state law is without authority to qualify or limit such an agreement because contracts negotiated under the aegis of said Act take on the *imprimatur* of the federal law and are paramount to conflicting state law under the "supremacy clause" of the Federal Constitution. The appellee-commission submits that these cases stand for the principle that the parties to a collective bargaining agreement entered into pursuant to said law may contract as to their mutual rights and liabilities with regard to lawful subjects involving their relationship, and that is all; this is in furtherance of the federal policy therein contained that collective bargaining is "* * * for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."[8]

By implication, the appellant would, under the "supremacy clause" of the Federal Constitution extend the validity of a collective bargaining agreement to matters which are neither conditions of employment, nor mutual, nor involve their employer-employee relationship. The state alone may allow or deny unemployment compensation benefits and may do so only in accordance with the state law establishing and governing same. Unemployment compensation benefits under state law patently are not, and may not be equated with, mutual rights which exist between the worker and the employer; they may not be granted or denied by an employer, nor may they be the subject matter of bargaining or contract between the worker and the employer. A legal principle which would sanction the converse would render enforceable a collective bargaining agreement increasing or decreasing unemployment compensa-

[8] 29 USC (1958 ed), §151.

tion benefits under stipulated conditions; it would have a like effect upon a collective bargaining agreement providing for the increase or decrease of an employer's tax rate — despite state unemployment compensation statutes to the contrary.

In a suit in which the employer contended that unemployment compensation benefits received during an award period should be deducted by the National Labor Relations Board from back pay awards, this Court said:

> "Payments of unemployment compensation were not made to the employees by respondent but by the state out of state funds derived from taxation. True, these taxes were paid by employers, and thus to some extent respondent helped to create the fund. However, the payments to the employees were not made to discharge any liability or obligation of respondent, but to carry out a policy of social betterment for the benefit of the entire state." *Labor Board* v. *Gullett Gin Co.*, 340 US 361, 364, 71 S Ct 337, 95 L ed 337.

Similarly, in *National Labor Relations Board* v. *Moss Planing Mill Co.*, 224 F 2d 702, at page 704, the court said:

> "The employer participates only as a taxpayer. As such, his obligation is not to the recipient of unemployment benefits but to the State. There is no contractual relationship between him and the recipient. It is, of course, quite clear that any benefit that the recipient of unemployment compensation receives is collateral to the fact that he was working for a particular employer."

In support of appellant's contention as to the effect of the "supremacy clause" of the Federal Constitution, it

cites the *Taylor* and *Oliver Cases, supra*, both of which were concerned with conditions of employment. They involved the validity of contractual provisions which were governed by federal statutes. In both instances this Court held that the terms of the agreements could not be invalidated by a state law. However, it must be remembered that these were matters upon which the parties had a federally granted right to negotiate by virtue of the Railway Labor Act and the National Labor Relations Act, respectively.

In the case now before the Court, we are not dealing with an actual fact situation, as were the *Taylor* and *Oliver Cases;* on the contrary, the parties to the agreement here involved heve created a fiction, to the end that an authorized strike is by contract deemed to exist, contrary to actuality, in any bargaining unit under said agreement which experiences an interruption in the flow of material or services as the result of an authorized strike in a feeder bargaining unit covered by said Agreement. Thus integrality, by agreement between the union and the employer, is made the basic test of the extent of "the establishment," despite the fact that this concept is premised on a make-believe situation. This type of maneuver is frowned upon by the law, which favors the examination of the true and existent facts and the application of the law thereto. In *In Re Morton,* 284 NY 167, 30 NE 2d 369, the court held that under the unemployment compensation law an agreement of the employee to waive the benefits of the act is void, and no written agreement may be entered into to preclude an examination to determine whether the actual relationship is such as to bring the employee within the scope of the law. See also *Knowles* v. *Roberts,* Ohio App., 117 NE 2d 173, to the same effect.

In essence, it is the appellant's position that, just as *Park* v. *Employment Security Commission,* 355 Mich 103, 94 NW

2d 407, overruled *Chrysler Corp.* v. *Smith*, 297 Mich 438, 298 NW 87, to the extent that the latter adopted "integral functioning" as the basic test of the extent of "the establishment" under the Michigan employment security act, the contracting parties here have, by their contract, overruled the *Park Case* and, on the basis of the appellant's version of the applicability of the "supremacy clause," the Michigan court must accept the fact that it has been neutralized.

The appellee-commission cannot accept this thesis. In this connection, attention is directed to the case of *Southern Pacific Co.* v. *Arizona*, 325 US 761, 65 S Ct 1515, 89 L ed 1915. At page 766, it is stated:

> "Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested, *Reid* v. *Colorado*, 187 U.S. 137, 148; *Missouri Pacific R. Co.* v. *Larabee Mills*, 211 U.S. 612, 621, *et seq.*; *Missouri, K. & T. R. Co.* v. *Harris*, 234 U.S. 412, 418-419; *Welch Co.* v. *New Hampshire*, 306 U.S. 79, 85; *Allen-Bradley Local* v. *Board*, 315 U.S. 740, 749, or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy. *Sinnot* v. *Davenport*, 22 How. 227, 243; *Missouri, K. & T. R. Co.* v. *Haber*, 169 U.S. 613, 623; *Savage* v. *Jones*, 225 U.S. 501, 533; *Carey* v. *South Dakota*, 250 U.S. 118, 122; *Atchinson, T. & S.F.R. Co.* v. *Railroad Comm'n* 283 U.S. 380, 391; *Townsend* v. *Yeomans*, 301 U.S. 441, 454."

Specific application of this principle is found in the case of *International Union* v. *Wisconsin Board*, 336 US 245, 69 S Ct 516, 93 L ed 651, wherein negotiations for a collective

bargaining agreement between an employer engaged in interstate commerce and a labor union certified under the National Labor Relations Act as the collective bargaining representative of the employees became deadlocked. In order to exert pressure upon the employer, the union adopted a plan whereby union meetings were called at irregular times during working hours without advance notice to the employer or any notice as to whether or when the employees would return. In a period of less than 5 months, 27 such work stoppages occurred. The employer was not informed during this period of any specific demands which these tactics were designed to enforce nor what concessions it could make to avoid them. In a proceeding under the Wisconsin employment peace act, the Wisconsin employment relations board issued an order which was construed and upheld by the state supreme court as forbidding the individual defendants and members of the union from engaging in concerted efforts to interfere with production by these methods. Commencing at page 252 of *International Union*, supra, it is stated:

> "The substantial issue is whether Congress has protected the union conduct which the State has forbidden, and hence the state legislation must yield. When the order of the State Board and the decision of the State Supreme Court were made, the National Labor Relations Act, 49 Stat. 449, 29 U.S.C. §§151-166, was in effect and questions of conflict between state and federal law were raised and decided with reference to it. However, the order imposes a continuing restraint which it is contended now conflicts with the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C. §§141-197, which amended the earlier statute. We therefore consider the state action in relation to both Federal Acts.

"Congress has not seen fit in either of these Acts to declare either a general policy or to state specific rules as to their effects on state regulation of various phases of labor relations over which the several states traditionally have exercised control.

* * * * *

"Congress made in the National Labor Relations Act no express delegation of power to the Board to permit or forbid this particular union conduct, from which an exclusion of state power could be implied. The Labor Management Relations Act declared it to be an unfair labor practice for a union to induce or engage in a strike or concerted refusal to work where an object thereof is any of certain enumerated ones. §8 (b) (4), 61 Stat. 140, 141; 29 U.S.C. §158 (b) (4). Nevertheless the conduct here described is not forbidden by this Act and no proceeding is authorized by which the Federal Board may deal with it in any manner. While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal—even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the states. In this case there was also evidence of considerable injury to property and intimidation of other employees by threats and no one questions the State's power to police coercion by those methods."

Relating the principles of the *International Union Case, supra,* to the matter now before this Court, it is seen that, in the same fashion, congress has not seen fit, in the National Labor Relations Act, to declare either a general policy or

to lay down specific rules with respect to that Act's effect on state regulations for the payment of unemployment compensation benefits, over which the several states traditionally have exercised control. All the more is this so, when it is considered that neither in the Social Security Act[9] nor in the Federal Unemployment Tax Act[10] is provision made for the federal payment of unemployment compensation benefits. Instead, the federal government fosters the payment of such benefits, as a matter of federal policy, through cooperation with the states.

The case of *Carmichael* v. *Southern Coal & Coke Co.*, 301 US 495, 57 S Ct 868, 81 L ed 1245, held that the federal and state unemployment tax acts embodied a cooperative legislative effort for the accomplishment of a common purpose which neither government could achieve by itself. At page 526, in answer to the claim that the states had surrendered sovereignty to the federal government in the area of unemployment compensation, this Court stated:

> "As the state legislation is not the product of a prohibited coercion, there is little else to which appellees can point as indicating a surrender of state sovereignty. As the opinion in the *Chas. C. Steward Machine Co.* case points out, full liberty of action is secured to the state by both statutes. The unemployment compensation fund is administered in accordance with state law by the state commission. The statute may be repealed at the will of the legislature, and in that case the state will be free to withdraw at any time its unexpended share of the Unemployment Trust Fund from the treasury of the United States, and to use it for any

[9] 42 USC (1958 ed), § 501 *et seq.*

[10] 26 USC (1958 ed), § 3301 *et seq.*

> public purpose. And, for the reasons stated in the opinion in the *Chas. C. Steward Machine Co.* case, we conclude that the deposit by the state of its compensation fund in the Unemployment Trust Fund involves no more of a surrender of sovereignty than does the choice of any other depository for state funds. The power to contract and the power to select appropriate agencies and instrumentalities for the execution of state policy are attributes of state sovereignty. They are not lost by their exercise."

In spite of this clearly delineated public purpose common to both the national and state governments, the appellant would have us strike down the waiver provision of section 31 of the Michigan employment security act on the theory that a contract provision pursuant to a federal enactment foreign to the joint federal-state unemployment compensation program mandates this anomaly.

The appellee-commission submits that, in view of the foregoing, the "supremacy clause" of the Federal Constitution does not mandate the avoidance of the application of the waiver provisions of section 31 of the Michigan employment security act nor does it require the *acceptance* of the contract-created fictitious strike in the disposition of the cause here before the Court.

(b) *The Equal Protection Clause:*

Because the appellant's arguments in relation to its separately stated federal questions are not segregated, it is difficult to discern just what part of its argument is based on the "equal protection" clause. Appellant merely states that "[w]hether a labor dispute is initiated and negotiated in a plant located in another state has no bearing

on the basic objectives of this social legislation,"[11] that "[s]uch arbitrary and discriminatory distinctions have no reasonable relationship to the voluntary or involuntary nature of a claimant's unemployment, or to whether or not the claimant was directly involved in the strike, lockout, or labor dispute," [12] and that "[t]herefore, the test of involvement applied by the appeal board does not constitute a reasonable classification, and the result clearly imposes a discriminatory burden on inter-state employers, both tax-wise and labor relations-wise in violation of the "equal protection" and "commerce" clauses of the Constitution."[13]

Both the referee and the appeal board in this matter found that the claimant-appellees working in the Flint, Michigan plants of the appellant became unemployed due to a labor dispute in its Mansfield, Ohio plant, which labor dispute, because it interrupted the flow of materials to their plant caused a stoppage of work and their resultant unemployment. Both administrative bodies also held that there was a labor dispute within the establishment of the Michigan Buick and Fisher Body Plants, but held, however, that since the claimant-appellees were not directly involved in the labor dispute they were not subject to disqualification for unemployment benefits under the terms of section 29(1)(b) of the Michigan employment security act.

The decision of the supreme court of Michigan, in effect, affirmed the foregoing disposition of the case. In reversing the Ingham circuit court, which had reversed the appeal

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[11] Jurisdictional Statement, p 34.

[12] Jurisdictional Statement, p 34.

[13] Jurisdictional Statement, pp 34-35.

board, the majority of the court held (1) that the Flint plants must be regarded as a separate establishment from the Mansfield, Ohio plant insofar as the application of said section 29(I)(b) of the Michigan employment security act is concerned, (2) that paragraph 118 of the National Agreement between the claimant-appellees' union and the appellant constituted an illegal waiver of unemployment benefits contrary to section 31 of the Michigan employment security act, (3) that there was no labor dispute in the Michigan plants where the claimant-appellees were employed and (4) that the "supremacy clause" of the Federal Constitution does not validate a provision of a collective bargaining agreement which is illegal under a state unemployment compensation law. Justice Black, in the dissenting opinion, reported at 376 Mich 135, 135 NW 2d 921, filed July 13, 1965, which opinion was explicitly adopted by the majority of the Michigan court, on rehearing, in its opinion reported in 378 Mich 110, 142 NW 2d 686, filed June 8, 1966, said (pp 143-144):

> "The minority opinion of *Chrysler Corporation* v. *Smith*, 297 Mich 438, 135 ALR 900, later to become law *(Park* v. *Employment Security Commission*, 355 Mich 103), agreed with then Circuit Judge Carr (p 469):
>
> > " 'It is our conclusion from the foregoing that the several plants of appellant Chrysler Corporation must be held to be separate establishments within the meaning of our statute, and in this determination we concur with the conclusion of the referee, the appeal board, and Judge Carr, who affirmed their decisions.'
>
> "The essence of Judge Carr's *Chrysler Case* opinion appears on page 118 of Park's report. *The conclu-*

sion finally reached by that eminent jurist was that 'plaintiff's (Chrysler) different plants must be regarded as separate establishments insofar as the application of section 29, subd (d)[14] *is concerned.' As in Park (140 and again at 151), I agree unreservedly with Judge Carr's view and application of said section 29(d), and therefore look upon Park as precedentially controlling of this appeal.''* (Emphasis supplied.)

It would appear, therefore, that if any classification is made by section 29(1)(b) of the Michigan employment security act, as then in effect and as interpreted by the supreme court of Michigan, it is that it denies unemployment benefits to individuals in an establishment whose unemployment is due to a labor dispute in which they are directly involved, but permits unemployment benefits to individuals unemployed because of a stoppage of work in their establishment as a result of a labor dispute in another establishment of their employer in which they are not directly involved.

The rule governing constitutionally permissible classifications is laid down in *Allied Stores of Ohio, Inc.* v. *Bowers* (1958), 358 US 522, 79 S Ct 437, L ed 2d 480. It is stated as follows (pp 527-528):

> '' 'If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law.' *Brown-Forman Co.* v. *Kentucky,* 217 U.S. 563, 573. *State Board of Tax Comm'rs* v. *Jackson,* 283 U.S. 527, 537. That a statute

[14] Subdivision (d) became section 29 (c) of the Michigan employment security act by Act No. 364, PA 1941, and, in turn, it became section 29 (1) (b) thereof by Act No. 360, PA 1947.

may discriminate in favor of a certain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction or difference in state policy. *American Sugar Ref. Co.* v. *Louisiana,* 179 U.S. 89; *Stebbins* v. *Riley,* 268 U.S. 137, 142.

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"• • • Similarly, it has long been settled that a classification, though discriminatory, is not arbitrary nor violative of the Equal Protection Clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it. *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61, 78; *Quong Wing* v. *Kirkendall,* 223 U.S. 59; *Rast* v. *Van Deman & Lewis Co.,* "249 U.S. 342, 357; *State Tax Comm'rs* v. *Jackson,* 283 U.S., at 537."

Concurring, Mr. Justice Brennan, with whom Mr. Justice Harlan joined, said (p 532):

"• • • the utmost latitude, under the Equal Protection Clause, must be afforded a State in defining categories of classification."

The denial of "equal protection" argument involving the statutory provision here present was previously raised without success, in this Court. See *Lawrence Baking Company* v. *Unemployment Compensation Commission* (1944), 308 Mich 198, 13 NW 2d 260, 154 ALR 660, in which a petition for writ of certiorari was denied by the U.S. Supreme Court, 323 US 738, 65 S Ct 42, 89 L ed 591 (1944). In that case striking employees filed claims with the appellee-commission, then known as the Michigan unemployment compensation commission, for unemployment benefits after a stoppage of work occurred in connection with a dispute

with their employer. The stoppage was short-lived as the employer replaced the striking workers with other individuals.

The supreme court of Michigan allowed payment of benefits on the ground that the striking employees had been replaced and, as a result, there was no "stoppage of work" in the establishment concerned. It, therefore, held that the disqualification was inapplicable. The employer's attack raised the issues of "due process and equal protection of law." The Michigan supreme court rejected this attack, quoting in support from *Carmichael* v. *Southern Coal & Coke Co.*, 301 US 495, 57 S Ct 868, 81 L ed 1245, which upheld the Alabama unemployment compensation act, as follows (p 215):

> "'A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it.'"

In holding that the classification which was involved was constitutionally valid, the supreme court of Michigan said (p 212):

> "Under the amendment, as construed, employees are disqualified if the labor dispute results in a stoppage of the employer's work, and they are not disqualified if the labor dispute does not result in such stoppage. This is a reasonable means of determining qualification for benefits and does not result in arbitrary or unjust discrimination between employers."

Also see *Lower Vein Coal Co.* v. *Industrial Board of Indiana*, 255 US 144, 41 S Ct 252, 65 L ed 555, *Ward &*

Gow v. *Krinsky,* 259 US 503, 42 S Ct 529, 66 L ed 1033, involving construction of state workmen's compensation acts, to the same effect.

The classification here involved, which groups by plant location, is challenged by the appellant, which urges classification based on functional integrality. Every unemployment compensation law in the land contains some form of labor dispute disqualification which follows a similar method of classification, namely, by physical location. In thirty-nine states, and the District of Columbia, the classification hinges upon whether or not the labor dispute in question occurs in the "factory, establishment, or other premises." Eight states, including Michigan, speak of "the establishment." One state, Idaho, speaks in terms of "premises." (See Commerce Clearing House: Unemployment Insurance Reported.) Surely there is no basis for the claim that this method of classification in Michigan is "invidious or palpably arbitrary." *Allied Stores of Ohio, Inc., supra.*

(c) *The Commerce Clause:*

Just what aspect of appellant's argument is with respect to the "commerce clause" is, likewise, not easily discernible except that it is claimed that the Michigan employment security act, as interpreted by the supreme court of Michigan, imposes a discriminatory burden on inter-state employers, both tax-wise and labor relations-wise. The nature of the alleged discrimination, however, is not spelled out or delineated.

What is the "undue burden" here in question?

Under the Michigan employment security act benefits are paid out of a pooled fund created and maintained by tax-

ation of employers (section 17(a)). However, the tax rate of any employer may be, but not necessarily is, affected by the payment of benefits to his employees or former workers in any particular case. The commission maintains a separate "rating account" for each employer, which, as of a prescribed computation date, relates the total taxable wages paid by an employer for a statutorily prescribed period to the amount of taxes paid by the employer at his regular computed rate, less the total benefits charged to the employer's account (sections 17(2) and 18(c)). Based thereon (in the absence of consecutive negative balances in the rating account), the current tax rate assigned to an employer may vary between 0.0% and 4.6% (section 19(a)). There is nothing in the record concerning what effect, if any, the payment of the claims here in question, will have upon the tax rate of appellant. In any event, the tax imposed to create and maintain the fund out of which unemployment compensation benefits are paid here is for a public purpose expressly declared in an enactment falling within the range of legislative police powers, and the policy involved is one with which the courts never have interfered.

Any contention that the interpretation of the statute by the Michigan court places an undue burden on interstate commerce must perforce be based on the fact that the appellant is a foreign corporation doing business in Michigan, and engaged in selling its products throughout the United States. The fact that the court awarded benefits to Michigan workers laid off as a result of a strike in a plant located in Mansfield, Ohio is not significant. In determining if an undue burden exists, location of the struck plant in Mansfield, Ohio or in Saginaw, Michigan is, it is submitted, a distinction without a difference insofar as the legal principle involved is concerned.

If an increase in the tax rate would not be an undue burden had the strike occurred in a Saginaw, Michigan plant of the company, the occurrence of the strike in Ohio creates no greater impact.

The Federal Unemployment Tax Act, Chapter 23 of the Internal Revenue Code of 1954, provides for the crediting against the payroll tax levied on employers under its provisions (68A Stat 439 (1954), 26 USC §3301), contributions paid under State unemployment compensation laws (68A Stat 439 (1954), 26 USC §3302), provided such state laws are certified as containing certain minimum standards. Reference to these standards (68A Stat 443 (1954), 26 USC 3304(a)) establishes that they in no way require that any disqualification be imposed by a state for unemployment due to a labor dispute in order for such certification to be granted.

No constitutional prohibition, we submit, would, therefore, prevent the Michigan legislature, if it so chose, from amending its labor dispute disqualification provisions so as to allow the payment of unemployment benefits to strikers while they are on strike.

In what respect, then, is it unconstitutional to provide, as does the Michigan law in this case, that those involuntarily laid off at one plant because of a strike in another plant of the same corporation are not disqualified, based on a method of classification which categorizes on the basis of whether or not the dispute occurred in the "establishment" in which claimant was last employed?

It is the appellee-commission's position that the classification involved in this case rests on a reasonable consideration of difference or policy and that the selection made is neither capricious nor arbitrary, and that there is, therefore, no violation of the commerce clause.

(d) *The Due Process Clause:*

The contention that this case presents a federal question because the appellant has been denied "due process" is posed in the "Questions Presented" portion of appellant's Jurisdictional Statement, but it has not been pointedly argued. Merely because appellant's tax rate may be affected by the allowance of unemployment benefits is certainly not a denial of "due process." As previously observed, the Michigan legislature is not required, by any federal or state law or any federal or state constitution mandate, to provide a disqualification for unemployment benefits to individuals involved in labor disputes. As a denial of procedural "due process" is not claimed, appellant's contention that the decision of the supreme court of Michigan denied "due process" must be characterized as without basis.

(e) *There is no conflict between the Michigan employment security act and the federal laws regulating labor relations:*

The contention that a federal question is here presented because the Michigan employment security act, as interpreted by the supreme court of Michigan, conflicts with a field preempted by the provisions and policies of the Labor Management Relations Act of 1947 is, likewise, without basis. The Michigan employment security act in no way invades the ambit of regulation or jurisdiction of the federal Labor Management Relations Act. Nor is there anything in the Labor Management Relations Act which may specifically, or by implication, be construed as granting to federal authorities the right to determine for the states what individuals unemployed because of a labor dispute may, or may not, be granted unemployment benefits. What constitutes a "labor dispute" for purposes relevant to the

Labor Management Relations Act is not by said law foisted upon the states for unemployment benefit purposes. The Labor Management Relations Act is concerned with its own purposes and objectives, and not with the unemployment benefit laws of the several states. Likewise, the Michigan employment security act in no way invades the field of labor-management relations, or attempts to determine for federal purposes whether a labor dispute does or does not exist.

(2) The Michigan Decision Was Based Upon Adequate Non-Federal Grounds.

The Court below ruled as a matter of law that the appellant's manufacturing plants located in Flint, Michigan and its plant in Mansfield, Ohio do not constitute a single "establishment" within the meaning of the Michigan employment security act. Appellant argues that the term "establishment" includes all the plants wherever located because of a provision in its contract with the union representing the claimant-appellees. The Court rejected this contention. It held that the appellant's Buick and Fisher Plant No. 1, located at Flint, were separate "establishments" and that despite the said provision of the agreement, there was no work stoppage at said plants because of the stoppage at its Mansfield, Ohio plant. By so ruling, it precluded consideration of the strike at the Mansfield, Ohio plant from consideration in determining the disqualification of the claimant-appellees herein as provided by the Michigan employment security act in section 29(1)(b) thereof.

It is thus clear that what the supreme court of Michigan did here was to construe a statute passed by the Michigan legislature. In so doing, it affirmed the doctrine which it

had established in *Park* v. *Employment Security Commission, supra.*

The decision was, therefore, based solely on adequate state grounds.

This Court has ruled that it will not review a state court decision where independent and adequate non-federal grounds of decision appear. See *Herb* v. *Pitcairn,* 324 US 117, 125-126, 65 S Ct 459, 89 L ed 789, where it was stated:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. (Citing cases.) The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion."

The state court's decision here before the Court required no reference to a federal question, the non-federal grounds being sufficiently broad to support the judgment. *Eustis* v. *Bolles,* 150 US 361, 369-70, 14 S Ct 131, 37 L ed 1111.

CONCLUSION

It is respectfully submitted that this Court, for the reasons herein stated, does not have jurisdiction of this appeal and, therefore, should grant this Motion to Dismiss or Affirm.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 658

GENERAL MOTORS CORPORATION,
a Delaware corporation
(BUICK MOTOR DIVISION and FISHER BODY DIVISION),
Appellant,
v.
APPEAL BOARD OF THE MICHIGAN EMPLOYMENT SECURITY COMMISSION, MICHIGAN EMPLOYMENT SECURITY COMMISSION,
Appellees,
and
ROBERT H. STINSON, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM

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General Motors Corporation, Appellant herein, pursuant to Rule 16 (3) of the Revised Rules of this Court, makes the following reply in opposition to the motions to dismiss or affirm filed by the Michigan Employment Security Commission and Robert H. Stinson, et al., Appellees.

(1) THE DECISION OF THE STATE COURT WAS NOT BASED UPON INDEPENDENT AND ADEQUATE NON-FEDERAL GROUNDS.

The Appellees contend that the judgment of the Michigan Supreme Court from which this appeal is taken rests upon "adequate non-federal basis" and that the appeal should therefore be dismissed under Rule 16(1)(b). This contention is patently without merit and should be rejected by the Court.

In explanation of their contention, Appellees Robert H. Stinson, et al., hereinafter referred to as the Claimants, describe the "adequate" non-federal bases for the judgment at pages 15-16 of their motion as follows:

> "(1) employees in the Michigan plants who claim benefits here, laid off due to a strike in an Ohio plant, were not disqualified for unemployment compensation under the Michigan Statute because the struck plant and their plants were not one and the same establishment; and (2) the language of the contract between two private parties, urged by one of them as rendering the waiver provision of the State law inoperative, was invalid insofar as this objective was concerned."

Appellee MESC, hereinafter referred to as the Commission, described the non-federal bases for the judgment in similar terms at page 25 of its motion.

One obvious fallacy in these contentions lies in the open admission that the Michigan Court invalidated Paragraph 118 of the collective bargaining agreement by its construction of the "waiver" provisions of Section 31 of the State Act. This construction automatically invoked the federal question of whether the state law as so applied was invalid as repugnant to the Supremacy Clause of the United States Constitution and the Federal Labor Management Relations

Act. In order to reach its decision, the State Court was required to reject the contention of Appellant that Paragraph 118 carried the imprimatur of federal law and therefore held supremacy over the conflicting provisions of the state law.

In addition, the decision of the Michigan Court obviously rested squarely on a determination of the federal question of whether the payment of unemployment benefits to the Claimants during a strike in which they were directly interested and charging such benefits to Appellant's account was repugnant to the Labor Management Relations Act, and constituted an unconstitutional state regulation in an area preempted by that Act under the Commerce Clause of the United States Constitution.

Contrary to the contentions of Appellees, the State Court expressly acknowledged that the federal questions involved in this appeal required their consideration. Thus, Justice Black's Opinion, fully concurred in by the four-member majority, discussed and decided the question of conflict between the Michigan Act and federal labor law. That discussion did not constitute gratuitous dictum. On the contrary, his opinion turned directly on the federal questions raised by this appeal.

In support of the contention that the state court judgment rested on independent non-federal grounds, at page 11 of the Claimant's motion the observation is made that, "*There is not one word of reference in the Souris Opinion to any federal question.*"[1] However, Justice Souris expressly stated at the outset of his Opinion (App. A-11, p. 66)[2] that he concurred in Justice Black's Opinion "for the

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[1] Significantly, unlike Justice Black's Opinion, the Opinion of Justice Souris was not concurred in fully by the four-member majority of the Michigan Court. Justice Black merely "concurred in the result" (App. A-11, p. 66), apparently because he had reached the same conclusion for the reasons set forth in his own Opinion.

[2] Citations to Appendices will refer to the Appendices appended to the Jurisdictional Statement filed herein by Appellant.

reasons therein stated" and thus obviously embraced Justice Black's decision of the federal question. In addition, Justice Souris said (App. A-11, p. 63):

> "The essential facts and *principal questions* presented by the appeal are stated fully and accurately in the opinions of Justices DETHMERS and BLACK appearing at 376 Mich 135, 138, 143." (Emphasis added.)

The contention of Appellees that the decision of the State Court rested on independent and adequate non-federal grounds is entirely without substance. The decisions relied upon by the Appellees do not support the motions for which they are cited, and in fact support the jurisdiction of the Court over the subject matter of this appeal.

(2) THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL AND REQUIRE A DECISION BY THIS COURT.

The federal bases for the State Court's decision having been established, it is clear that the motions of Appellees to dismiss or affirm rest upon their remaining claim that the federal questions involved in the appeal are lacking in merit. To the extent that such questions have merit, the Appellees apparently concede their grave public importance and the overwhelming need for their final resolution by this Court.

Many of the arguments advanced by the Appellees on the merits were anticipated and met in the Jurisdictional Statement and will not be discussed in this reply. However, brief rejoinder will be made on the following points:

(a) The states are not free to grant unemployment benefits regardless of the impact on labor disputes affecting interstate commerce.

The Commission's motion makes the following flat assertion (p. 23):[3]

> "No constitutional prohibition, we submit, would, therefore, prevent the Michigan legislature, if it so chose, from amending its labor dispute disqualification provisions so as to allow the payment of unemployment benefits to strikers while they are on strike."

In support of this claim of absolute state sovereignty, the Appellees rely principally upon the following decisions of this Court: *Southern Pacific Co. v. Arizona;* 325 U.S. 761, *Carmichael v. Southern Coal & Coke Co.,* 301 U.S. 495, *International Union v. Wisconsin Board,* 336 U.S. 245, and *Labor Board v. Gullett Gin Co.,* 340 U.S. 361.[4] Stated cryptically, the decisions will not sustain the proposition for which they are cited.

The *Southern Pacific* case involved the constitutionality of a state law regulating the length of trains. Unlike the case at bar in which the federal labor law undeniably preempts the field of labor disputes affecting interstate commerce, the federal Interstate Commerce Act was held not

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[3] The same assertion is made in the Claimants' motion at page 27. If these assertions are true, it would also follow that state laws could be passed to aid employers in labor dispute situations by tolling state taxes during strikes and stoppages caused by strikes, or reimbursing employers for lost earnings.

[4] A few lower federal and state court decisions are also cited, but they add nothing to the Supreme Court decisions and do not warrant individual treatment. It should suffice to state that the lower court decisions are no more helpful to the position of Appellees than the decisions of this Court upon which they rely.

to be preemptive. However, the state law was nevertheless struck down under the Commerce Clause of the Constitution. In its decision the Court observed that states do not have power to regulate phases of interstate commerce where uniformity of regulation under a single authority is required (p. 767), and, after reasserting the power of Congress to exclude states even on purely local matters which affect interstate commerce (p. 769), the Court concluded (pp. 779-780):

> "The principle that, without controlling Congressional action, a state may not regulate interstate commerce so as substantially to affect its flow or deprive it of needed uniformity in its regulation *is not to be avoided by 'simply invoking the convenient apologetics of the police power,'*" (Emphasis added.)

In the instant case, we have a preemptive federal enactment regulating labor disputes under a single authority. We also have a state law which, while not purporting to regulate such disputes directly, nevertheless exercises a powerful regulatory influence by compelling the payment of benefits to one party to such disputes at the ultimate expense of the other, contrary to the federal law. This result is admittedly achieved by ignoring the direct involvement of unemployment claimants in a labor controversy, unless the dispute is found to exist within the claimants' establishment *by state definition*.[5] The difficulty with the Commission's position is that in its concentration on the unemployment compensation aspect of the state law, it is oblivious to the disruptive impact which the payment of

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[5] Commission's motion p. 24-25, Opinion of Justice Souris, App. A-11, p. 65-66, *Park v. E.S.C.*, 355 Mich 103, 131-132, 94 N.W. 2d 407. The Commission and obviously the Michigan Court openly maintain that the state is not bound by the federal definition of "labor dispute" and may adopt its own narrower definition in assessing the right of strikers or other disputants to benefits.

benefits to employes involved in a labor dispute inevitably has on the relative bargaining positions of labor and management. Under the doctrine of the *Southern Pacific* decision, where a state refuses to recognize such obvious invasion of a federally preempted field, it becomes the duty of this Court to intervene under the Supremacy and Commerce Clauses in the interest of enforcing the preemptive federal law.

The *Carmichael, International Union,* and *Gullett* decisions likewise fail to support the claim of absolute sovereignty made for the state law. *The Carmichael* decision concededly endorsed the power of the states to enact compensation laws in the unemployment field. It did not, however, authorize and sanction any state enactment, regardless of its encroachment upon the federally preempted field of labor disputes affecting interstate commerce. The *International Union* decision involved coercion, injury to property and intimidation of employes which placed the concerted conduct outside of the protection of the federal labor law. No such exclusion from the area preempted by the federal law is existent in this case.

The *Gullett* case is even less in point. The sole issue in that case was whether the federal Labor Board abused its discretion by not deducting unemployment benefits in ordering back pay to an employe whose rights had been infringed under the federal law. The case did not involve a conflict between state and federal law, or the encroachment of a state law upon a federally preempted field. On the other hand, the Court did observe that the implementation of the federal law could not be made to depend upon the "myriad provisions" of state unemployment laws, thus tacitly recognizing the preemptive operation of the federal law.

The absolute sovereignty claimed for the state in determining the right to unemployment benefits of strikers or

other employes involved in labor disputes cannot be sustained. Accordingly, the competing demands of federal and state interests, resolved by the Michigan Court adversely to federal law, should be reappraised and accommodated by this Court.

(b) The arguments advanced by Appellees to invalidate Paragraph 118 are untenable.

The Appellees rely upon several arguments to support the Michigan Court's invalidation of Paragraph 118 by operation of the state law, none of which will withstand close scrutiny. In essence, the Appellees contend (1) that Paragraph 118 purported to set up a fictional labor dispute in the Claimants' plants and, therefore, could be disregarded by the Commission in finding the controlling facts, (2) that the *Oliver* and *Taylor* cases[6] relied upon by Appellant are inapposite, because Paragraph 118 did not involve a mandatory subject of bargaining and, in any event, the overriding state statute was a health and welfare law, and (3) that Paragraph 118 constituted an unlawful attempt to reverse the definition of the term "establishment" in the state law previously enunciated by the Michigan Court in the *Park* case.[7]

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[6] *Teamsters v. Oliver*, 358 U.S. 283; *California v. Taylor*, 353 U.S. 553.

[7] *Park v. E.S.C.* (*supra*) The Claimants also allege: "Appellant *stated below* that Paragraph 118 was designed to relate to . . . [an] attempted waiver of benefits," referring to a portion of the oral argument of counsel before the Appeal Board. This assertion does not correctly represent the facts. No such "statement" was made by or on behalf of the Appellant. The Court is referred to pages 469a, 470a-471a and 476a-477a of the printed Joint Appendix if it desires to review the actual statements of counsel, but respectfully reminded that the question of whether Paragraph 118 constitutes a "waiver" under the state law is no longer open to debate, having already been decided by the state court in the affirmative, not because of any evidence of intent or stipulation of counsel, but solely due to its legal effect of identifying the Claimants as parties to the dispute.

In respect to Appellees' first argument, a very brief historical reference must be undertaken in order to place Paragraph 118 in its proper perspective. The record shows that the International Union, UAW was first certified by the National Labor Relations Board as the exclusive representative of hourly rated production and maintenance employes in a number of General Motors plants in 1940. This was done by a separate election and separate certification for each plant.[8] Following these certifications the Union requested a single national agreement instead of a separate agreement for each plant, but the Company refused.[9] However, later in 1940 the parties agreed upon a single national agreement which gave the Union the standard terms of employment it desired and provided the Company the protection of a limited no-strike clause of which Paragraph 118 was a part.[10]

In view of the national bargaining unit which was established by this national agreement,[11] it was logical for the parties to agree by Paragraph 118 that a strike in any one plant during the contract term would extend to all affected plants within the unit. This agreement realistically defined the scope of strikes within the national unit, recognizing the direct interest of all employes covered by the unit in matters negotiated in any part thereof, and protecting the unit against fragmentation by selective strike action.

In the factual background presented to the Commission, the Appeal Board and the Court, therefore, Paragraph 118

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[8] Printed Joint Appendix, p. 358a. See also 24 NLRB 159.

[9] Printed Joint Appendix, p. 360a.

[10] Printed Joint Appendix, p. 355a, 431a.

[11] The national unit was certified by the NLRB in 1958. See Jurisdictional Statement p. 26, footnote 79.

in providing that the Michigan Claimants were participants in the dispute did not require the adoption of a fiction. Paragraph 118 merely endorsed the facts as they existed by precluding any finding that a purely local strike or a purely local labor dispute existed at the Ohio plant to the exclusion of other parts of the national bargaining unit, particularly in a situation where the negotiations involved union demands for changes in the national agreement which would directly benefit the Michigan Claimants.

Recognizing these realities, the Referee and the Appeal Board initially found that the labor dispute extended to the Michigan plants, saying that Paragraph 118 was not "a collusive agreement that unemployment compensation benefits be waived." (App. A-1, p. 13, App. A-3, p. 34). The Circuit Court affirmed this finding (App. A-5, p. 39). Without a scintilla of supporting evidence, the Michigan Supreme Court reversed this finding as a matter of law. In doing so, it fragmentized the national bargaining unit and established separate local plant units for unemployment compensation purposes which it termed "establishments." Such action was in open disregard of the 1958 certification of the National Labor Relations Board which established a national unit in light of the system of national bargaining historically practiced by the union and the company. As observed under similar circumstances in *International Union v. O'Brien,* 339 U.S. 454, 458-459:

> "Though the unit for the Michigan strike vote cannot extend beyond the State's borders, the unit for which appellant union is the federally certified bargaining representative includes Chrysler plants in California and Indiana as well as Michigan. *Chrysler Corp.*, 42 N.L.R.B. 1145 (1942). Without question, the Michigan provision conflicts with the exercise of federally protected labor rights. *A state statute so at war with federal law cannot survive.*" (Emphasis added.)

Contrary to the contentions of the Appellees, Paragraph 118 was consistent with the facts and supported by the findings of the Appeal Board and the overwhelming weight of the evidence. It correctly identified the Michigan claimants as parties to the dispute and was binding upon the State Court under the imprimatur of federal law.

The second argument designed to distinguish the *Oliver* and *Taylor* cases is equally untenable. The contention that Paragraph 118 was simply the *quid pro quo* for a national agreement and, therefore, not a mandatory subject of bargaining ignores the fact that the paragraph was also an integral and lawful part of the "no-strike" clause, on which bargaining was mandatory. Moreover, it is clear that a demand to establish standard terms of employment within numerous plants of a single employer by a national agreement is also a mandatory subject of bargaining. *Meat Cutters v. Jewel Tea Co.*, 381 U.S. 676, 688, 712-715, *Mine Workers v. Pennington*, 381 U.S. 657, 664.[12] Accordingly, whether the paragraph was negotiated as a part of the no-strike clause or the demand for a national agreement is immaterial.

The test of a mandatory subject of bargaining as enunciated in the *Jewell Tea* decision, depends not upon the form of the agreement, but upon the impact which the agreement will have on the interests of members of the bargaining unit (p. 690, footnote 5). In that case the demand in question was for a limitation on the marketing hours of stores in which union members worked. The Court held that the demand was sufficiently related to the subject of hours

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[12] The *Pennington* case involved the balancing of federal labor law policy against federal anti-trust policy. It did not involve the doctrine of federal preemption or a conflict between state and federal law. It, therefore, has no direct precedential value in this case, despite its citation by Justice Black. (App. A-10, p. 58, footnote 11).

of work to fall within the protection of the federal labor policy as a mandatory and lawful subject of bargaining (p. 689-690). The Court also reaffirmed its decision in the *Oliver* case in which it had held that a demand for fixing the prices at which employers could supply leased vehicles was a lawful and mandatory subject of bargaining, since the demand was not "a remote and indirect approach to the subject of wages . . . but a frontal attack upon a problem thought to threaten the maintenance of the basic wage structure established by the collective bargaining contract." (p. 690, footnote 5).

In the instant case, the provisions of Paragraph 118 were not a "remote and indirect" approach to preservation of the national agreement with its standard terms of employment and the national bargaining unit, nor to the preservation of labor peace during the contract term by an adequate no-strike clause. Paragraph 118 made a direct frontal attack on problems which the parties feared might threaten their historic bargaining relationship by providing that employes who became unemployed as a result of an authorized strike at some other plant within the bargaining unit would be participants in the strike and, therefore, would not be entitled to wages, seniority, holiday pay, vacation pay, supplemental unemployment compensation, or other benefits. The paragraph thus obviously insured that the strikers would be supported by all affected members of the bargaining unit, and that the company would not be forced by selective strike action to finance a strike against itself.

It is apparent from the foregoing that Paragraph 118 covered a mandatory subject of bargaining. However, this distinction is not crucial to a decision of this case. As noted in the Jurisdictional Statement (p. 22), a permissive subject of bargaining when agreed upon by the parties is also enforceable.

Certainly, the distinction between mandatory and permissive subjects of bargaining was not a criterion in the Michigan Court's decision. In Justice Black's opinion for the majority (App. A-10, p. 56) reference is made to the reversal of *I. M. Dach Underwear Co. v. ESC.*, 347 Mich 465, 80 N.W. 2d 193, by the decision in *MESC v. Vulcan Forging Co.*, 375 Mich 374, 134 N.W. 2d 749. In the *Vulcan* case the Court held that a vacation clause in a collective bargaining agreement which required the employer to shut down for two weeks did not disqualify employes whose seniority was insufficient to entitle them to vacation pay. Despite the fact that vacation clauses are unquestionably mandatory subjects of bargaining, the Court refused to find such employes voluntarily unemployed by the agreement of their union.

We turn briefly to the argument that the state statute here involved is exempt from the rule enunciated in the *Oliver* and *Taylor* cases because it is a health and welfare law. It is difficult to see how an unemployment compensation statute which is designed to protect involuntarily unemployed persons is any more a health and welfare law than an anti-trust statute which is designed to protect the consuming public from monopolistic trade practices. Both are enacted under state police power, and, as noted by this Court in the *Southern Pacific* case *(supra)*, the prohibition against a state's regulation of interstate commerce where uniformity of regulation is required cannot be avoided merely by invoking "the apologetics of the police power."

The final argument offered by the Appellees to distinguish the *Oliver* and *Taylor* cases rests on the charge that Paragraph 118 constituted an effort to reverse the definition of "establishment" handed down by the State Court in the *Park* case. This rationale is also difficult to follow,

since Paragraph 118 has been included in successive contracts since 1940, while the *Park* case was not decided until 1959. In any event, it is self-evident that Paragraph 118 does not purport to amend the state statute, but instead lawfully deals with the scope of labor disputes and strikes within the national bargaining unit in light of the facts and circumstances there existent.

The conclusion is clear and unmistakable. The *Oliver* and *Taylor* cases cannot be distinguished from the case at bar on any of the grounds invoked by the Appellees. Therefore, applying the governing rule of those cases, Paragraph 118 does carry the imprimatur of the federal labor law and should have been given effect by the State Court without regard to the waiver clause in the state statute.

(c) The cases cited by Appellees as precedent for dismissing this appeal are not in point.

The Claimants cite *Ford Motor Co. v. Alexander Park,* 360 U.S. 251, and *Lawrence Baking Co. v. U.C.C.,* 323 U.S. 738, as precedent for dismissing this appeal. An examination of the petitions for certiorari in those cases clearly shows that the grounds upon which the jurisdiction of the Court was sought were entirely different from the grounds asserted herein on appeal by the Jurisdictional Statement. Accordingly, the denial of certiorari in those cases should be disregarded by the Court in its decision to exercise its jurisdiction in this case.

CONCLUSION

For the reasons stated in the Jurisdictional Statement and in this Brief, the Appellant respectfully requests that the Court reject Appellees' Motions to Dismiss or Affirm and accept this case for oral argument.

Respectfully submitted,

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